

AGENDA



For a meeting of the
CONSTITUTION COMMITTEE
to be held on
MONDAY, 23 MARCH 2015
at
10.30 AM
in the
WITHAM ROOM - COUNCIL OFFICES, ST. PETER'S HILL, GRANTHAM. NG31 6PZ
Beverly Agass, Chief Executive

Committee Members:	Councillor Ray Auger, Councillor Vic Kerr, Councillor Alan Parkin (Vice-Chairman), Councillor Rob Shorrocks and Councillor Raymond Wootten (Chairman)
Committee Support Officer:	Lucy Bonshor Tel: (01476) 40 61 20 E-mail: l.bonshor@southkesteven.gov.uk

Members of the Committee are invited to attend the above meeting to consider the items of business listed below.

1. MEMBERSHIP

The Committee to be notified of any substitute members.

2. APOLOGIES

3. DISCLOSURE OF INTERESTS

Members are asked to disclose any interests in matters for consideration at the meeting.

4. MINUTES OF THE MEETING HELD ON 9TH FEBRUARY 2015

(Enclosure)

5. AMENDMENTS TO THE CONSTITUTION

Report PLA1092 from the Executive Manager Development and Growth

(Enclosure)

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6. AGENDA ITEMS

Report LDS146 from the Executive Manager Corporate

(Enclosure)

7. ANY OTHER BUSINESS WHICH THE CHAIRMAN, BY REASONS OF SPECIAL CIRCUMSTANCES, DECIDES IS URGENT

MINUTES

CONSTITUTION COMMITTEE
MONDAY, 9 FEBRUARY 2015



COMMITTEE MEMBERS PRESENT

Councillor George Chivers
Councillor Vic Kerr
Councillor Alan Parkin (Vice-Chairman)
Councillor Rob Shorrocks
Councillor Raymond Wootten (Chairman)

OFFICERS

Executive Manager Corporate (Lucy Youles)
Business Manager Environmental Health (Anne-Marie Coulthard)
Community Engagement and Policy Development Officer (Carol Drury)
Democratic Officer (Lucy Bonshor)

OTHER MEMBERS

Councillor Jacky Smith

57. MEMBERSHIP

The Committee were notified that Councillor Chivers was substituting for Councillor Auger.

58. DISCLOSURE OF INTERESTS

None disclosed.

59. MINUTES OF THE MEETING HELD ON 13TH OCTOBER 2014

The minutes of the meeting held on 13th October were agreed as a correct record.

A Member asked about when the deferred item would be discussed. The Executive Manager, Corporate confirmed that she had received no details about any amendments to bring the item back to the Committee. The Chairman indicated that he would take it up with the Leader and the Chairman of the Development Control Committee.

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60. AMENDMENTS TO THE CONSTITUTION

Mobile Homes Act 2013 and Enterprise and Regulatory Reform Act 2013

Decision:

The Constitution Committee recommends to Council that:

The Mobile Homes Act 2013 and the Mobile Homes Act 1983 and Enterprise and Regulatory Reform Act 2013 are added to the list of statutes contained within the Constitution and that the Executive Manager Environment and Officers delegated in writing by them are authorised to act under these statutes and Regulation Orders made thereunder.

The Business Manager Environmental Health submitted report ENV619 on behalf of the Executive Manager Environment. The report set out the provisions of the Mobile Homes Act 2013 and the Enterprise and Regulatory Reform Act 2013 which updated the provisions of the Caravans Sites and Control of Development Act 1960 and the Mobile Homes Act 1983. The acts provided new administrative and enforcement powers in respect of “relevant protected site” which were sites that were occupied for residential purposes as a permanent home throughout the year.

The Mobile Homes Act 2013 allowed that in the event of a breach of a licence condition on a relevant protected site a compliance notice could now be served. Local authorities could recover expenses associated with the service of the notice and undertake works in default where occupiers had been convicted of failing to comply with the notice. The Mobile Homes Act 2013 also amended the Mobile Homes Act 1983 which had been extended to give the Council a role in maintaining a register of site rules.

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) England Order 2014 had been made under the Enterprise and Regulatory Reform Act 2013 and required persons who engaged in lettings agency work to be members of one of three Ombudsman redress schemes for dealing with complaints. If the Council was satisfied that a person had failed to join a redress scheme they could be required to pay a fine up to £5,000. If the notice was not paid the Council could recover the costs through a court order.

For clarity the Business Manager confirmed the Executive Manager could “act” under the legislation by serving compliance notices, cost recovery notices, carrying out works in default notices, notices and serving notices for emergency action.

The Business Manager confirmed that the regulations were made in October 2014 and that work was being undertaken to inform all agencies.

It was proposed, seconded and agreed to add the legislation and delegation responsibilities to the Constitution.

Right to Legal Representation

Decision:

That the Constitution Committee recommends to Council the following amendments to the Arrangements for dealing with Standards Complaints under the Localism Act 2011 (the Arrangements):

- **That legal representation is permitted for Members who face an allegation of misconduct and are required to appear before the Review Board;**
- **That such representation must be provided at the cost to the Member and not at a cost to the Council.**

The Executive Manager Corporate submitted report LDS141 following the decision made at Full Council on 6th November to consider a recommendation to Council to amend the Arrangements to permit legal representation for Members appearing at a hearing before the Review Board.

Currently the arrangements were silent about representation of members about whom an allegation of misconduct had been investigated. If legal representation was permitted then the cost would be met by the Member not the Council. The Member who had submitted the motion felt that recognition needed to be contained within the Constitution that Members were able to have legal representation at these hearings.

The Executive Manager Corporate referred to the arrangement document for Standards allegations which was not contained within the Constitution it was part of the Code of Conduct for Members of which part was contained within the Constitution. If Members agreed the change the provision could be referenced within the process.

The Member referred to the other issues raised within his motion which would be discussed under the following item.

It was proposed, seconded and agreed that legal representation would be permitted for Members who faced an allegation of misconduct and were required to attend a Review Panel but that the cost would be met by the Member not the Council.

61. CONSTITUTION REVIEW

Decision:

- 1) That the Constitution Committee recommends to Council the draft Constitution document as circulated together with the following amendments/additions:
 - i) That the Constitution Committee recommends to Council the following addition to the Constitution

Procedure for cancellation of meetings

Meetings of Committees and Policy Development Groups can only be cancelled if:

- the notice period for items to be put on the agenda has lapsed (12 clear working days before the date of the meeting); and
 - the Chairman or Vice-Chairman in his/her absence has consulted with other members of the Committee/Policy Development Group and the majority have agreed to cancel the meeting.
- ii) That 7.3 (Meetings of the Policy Development Groups) and 7.4 (substitution) also be contained within Article 6 for the Scrutiny Committee worded appropriately including reference to substitutes not being members of the Executive or members of a Policy Development Group

Members had before them a copy of the draft Constitution following the review work that had been done to date. Articles 1, 4, 18 and 19 had been amalgamated and had already been before the Committee and agreed at Council together with the Budget and Policy Framework Rules which were contained in Article 4. The scheme of delegation and procedure rules had been amalgamated within the relevant Articles.

The Committee then went through each Article and the Executive Manager Corporate highlighted specific areas.

The summary and explanation had been changed to reflect the new number of wards and Members from May 2015.

Article 2, 2.3b would be changed to reflect the Council's decision at its meeting on 6th November also 2.3b (iv) included reference to mandatory training required by Development Control, Licensing and Governance and Audit Committees. The Members allowance scheme was also contained within this Article.

A short discussion followed on training following the May elections.

Article 3 had changed citizens to Members of the Public and 3.1 (d) had been changed to reflect current practice.

Article 4 – A question was asked whether 4.1.1 (x) should be changed to address an anomaly within the Constitution concerning the number of meetings held. Should this only be in reference to ordinary meetings of the Council with an indicative indication of when other meetings should be held. The Executive Manager Corporate was aware of the issue which had been raised by a Member of the Committee concerning the cancellation of meetings and that the issue was on the Scrutiny Committee agenda. If there were no specific items for a meeting then it couldn't be appropriate to hold a meeting when there was nothing to discuss. The Member who had raised the issue referred to the lack of powers contained within the Constitution that allowed Chairman to cancel meetings. The Executive Manager Corporate referred to the inclusion of wording such as *“and an indicative programme of meetings for Policy Development Groups and other Committees”* to 4.1.1 (x).

The Member who had raised the issue about the cancellation of meetings agreed that a calendar showing when meetings were scheduled was helpful to Members and enabled them to plan ahead however, he felt that changes needed to be made in terms of procedure for the cancellation of meetings.

He proposed the following additions to the Constitution in relation to the cancellation of meetings:

Meetings of Committees and Policy Development Groups can only be cancelled if:

- the notice period for items to be put on the agenda had lapsed: and
- the Chairman or Vice-Chairman in his/her absence has consulted with other members of the Committee/Policy Development Group and the majority have agreed to cancel the meeting.

A discussion followed about clarity on what was the correct notice period to comply with legislation (12 clear working days before the date of the meeting).

The proposal was seconded and on being put to the vote agreed.

The Executive Manager Corporate also highlighted an addition to 4.6.1 which reflected changes in legislation concerning the summons to meetings which may be sent electronically.

Article 5 - no change

11.25am Councillor Parkin left the meeting

Article 6

Before discussing the Article a Member asked if the Chairman of the Scrutiny Committee had to be of an opposing political group. The Executive Manager said that there was no legal requirement but it was seen as good practice not to have a Member of the ruling party as the Scrutiny Chairman.

The Executive Manager then referred to 7.3 (Meetings of Policy Development Groups) and 7.4 (substitution) which were contained in Article 7 for the Policy Development Groups she said that both of these were relevant to the Scrutiny Committee and should also be contained within Article 6. Members agreed with this and it was proposed, seconded and agreed.

Article 7

The Executive Manager Corporate informed Members that the word “co-terminus” had been changed to “aligned with” and that the procedure rules had been amalgamated within the Article. Officer titles had been amended to reflect the current structure and the changes made to the Cabinet and Policy Development Liaison Group which had been agreed by Council was also included.

Article 8

8.2 (b) (iv) added in accordance with changes to legislation. 8.5.4 consultation list updated.

Article 9

Regulatory Committees split into Development Control Committee, Licensing Committee and Alcohol, Entertainment and Late Night Refreshment Licensing Committee. 9.1.2 References to substitutes and training should include mandatory training.

Article 10 – no change

Article 11 – no change

Article 12 and Article 13 no change

Article 14

Scheme of delegation updated and contained within Article, less “wordy”. Legislation references will be contained within a separate appendix.

Article 15

Contained decision making and all relevant provisions, access to information rules and exempt information and local choice functions, it was suggested that although the Review Board was contained within this Article it would be better placed in Article 4.

Article 16 – no change

Financial Regulations, Contract Procedure Rules, Members Code of Conduct,

protocol for recording meetings in the council chamber and the civic protocol would remain within the Constitution. The Members Planning Code of Good Practice needed updating, the data protection policy, sponsorship arrangements protocol and the equal opportunity in relation to planning and the delivery of services would be removed as they did not need to be part of the Constitution.

It was proposed, seconded and agreed to put forward the draft Constitution to the next Council meeting including the amendments made at the meeting.

Meeting closed at 11.47am.

REPORT TO CONSTITUTION COMMITTEE

REPORT OF: Executive Manager Development and Growth

REPORT NO: PLA1092

DATE: 23rd March 2015

TITLE:	Neighbourhood Planning: Further amendments to Constitution	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	Key Decision	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Cllr Paul Carpenter Governance and Communication	
CONTACT OFFICER:	<i>Rachel Armstrong Senior Planning Policy officer</i> 01476 406469 r.armstrong@southkesteven.gov.uk	
INITIAL IMPACT ANALYSIS: Equality and Diversity	Carried out and Referred to in paragraph (7) below <i>Not applicable</i>	Full impact assessment Required:
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	The Localism Act 2011 (http://www.legislation.gov.uk/ukpga/2011/20/contents) The Neighbourhood Planning (General) Regulations 2012 (http://www.legislation.gov.uk/uksi/2012/637/contents/made)	

1. RECOMMENDATIONS

That the Constitution Committee recommend to Council that the Constitution be amended such that in relation to Neighbourhood Planning:

- **decisions in respect of action to be taken in response to recommendations included within the Examiner's Report and whether to modify the Plan or Referendum Area prior to submitting it for referendum will be delegated to the Executive Manager for Development and Growth after consultation with the Portfolio Holder (Grow the Economy) and the relevant local ward member(s)**
- **the decision to bring into force the NDP as part of the Development Plan, following a referendum result where more than half those voting in favour of the proposal should be delegated to the Portfolio Holder for Grow the Economy as a non-key decision.**

2. PURPOSE OF THE REPORT

2.1 The Localism Act 2011 (the Act) introduced neighbourhood planning as a new way for communities to help shape future development in their area. The Act and the Neighbourhood Planning (General) Regulations 2012 (the Regulations) confer specific functions on local planning authorities (LPA) in relation to neighbourhood planning. Whilst the Localism Act and Regulations are not specific as to where within the LPA decision making for neighbourhood planning should rest, the Functions Regulations which govern the Councils decision making process is clear that any decision to make or amend the Development Plan should rest with the Council not an Executive body of the Council. Thus a decision to progress a Neighbourhood Development Plan (NDP) or Neighbourhood Development Order (NDO) to referendum and then formally "make them" currently rests with full Council. In the case of NDPs this decision means that the plan will become part of the development plan

2.2 The current procedure required by the Functions Regulations that requires full Council to decide whether to take a Neighbourhood Development Plan to referendum and to then make the plan is lengthy, this report considers amendments to the constitution that are considered necessary to speed up the process of approving Neighbourhood Plans following receipt of the Examiners Report.

3. DETAILS OF REPORT

3.1 The Localism Act has introduced the following:

- Neighbourhood Development Plans (NDP) which set out policies for the development and use of land in a particular area. If a NDP has successfully passed all stages of preparation including an examination and referendum the LPA must adopt it as part of the Development Plan for their area
- Neighbourhood Development Orders (NDO) which grant planning permission for a specific type of development within a specified area or a site specific development. These must also be subject to examination and referendum

- 3.2 The procedures for making NDPs and NDOs are very similar. In each case only a qualifying body (Parish or Town Councils 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) can instigate NDPs and NDOs. Specific pre-submission consultation and publicity must be carried out by the qualifying body before a NDP or NDO is submitted to the LPA for the examination and referendum stages.
- 3.3 In September 2012 Council approved changes to its constitution delegating authority for the stages leading up to appointment of a person to carry out examination of a Neighbourhood Development Plan or Neighbourhood Development Order. to the Head of Development and Growth in discussion with the relevant Portfolio Holder and local ward member (s). (Report to Constitution Committee 24th September 2012 Report no PLA948)
- 3.4 The exception to the approved delegation is in respect of action to be taken in response to an examiner's report and whether to modify the Plan before submitting it for referendum and the bringing into force the NDP as part of the Development Plan. Currently decisions on these matters rest with Full Council.
- 3.5 The regulations require the Council to consider each of the recommendations made in the Examiners Report about a Neighbourhood Development Plan. It must then decide whether to make modifications to the plan; extend the referendum area and whether it is satisfied with the plan proposals and that the plan meets the basic conditions prescribed by legislation.
- 3.6 The Council must then decide to take the plan forward to referendum. There are prescribed regulations governing the way a referendum is held which includes a need to allow at least 28 working days from the decision to take a plan forward to the holding of the referendum.
- 3.7 If a referendum results in more than half of those voting in favour of the proposals the authority must make the NDP. It then becomes part of the Development Plan.
- 3.8 Whilst the Localism Act and Neighbourhood Planning Regulations are not specific as to where within the LPA decision making for neighbourhood planning should rest, the Functions Regulations which govern the Councils strategic decision making is clear that any decision to make or amend the Development Plan should rest with the Council not an Executive body of the Council. Thus these decision to progress a Neighbourhood Development Plan or Neighbourhood Development order to referendum and then to formally "make the plan" part of the development plan currently rests with Council.
- 3.9 Two Parish Councils (Stubton and Hough on the Hill) have prepared neighbourhood plans which have been examined. The Examiner for each plan has recommended that, subject to some minor changes, the plans be taken to Referendum. The Examiners submitted their reports in January 2015 and because of the current procedure requiring the decision to progress the plans to Referendum to be made by Council the referendum will not be held until 2nd July.

- 3.10 The two Parish Councils concerned have indicated that they believe this delay is unacceptable. To speed up the decision making process for future NDPs it is proposed that the constitution is amended so that:
- decisions in respect of action to be taken in response to an examiner's report about a NDP or NDO and whether to modify the Plan or referendum area before submitting it for referendum will be delegated to the Executive Manager for Development and Growth after consultation with the Portfolio Holder (Grow the Economy) and the relevant local ward member(s), and
 - the decision to bring into force the NDP as part of the Development Plan, following a referendum result where more than half those voting vote in favour of the proposal should be delegated to the Portfolio Holder (Grow the Economy) as a non-key decision.

4. OTHER OPTIONS CONSIDERED

- 4.1 Decisions need to be taken in an efficient and effective way in order not to delay the process of preparing the NDP and NDO. The proposed decision making processes are considered to represent the most appropriate way to ensure that this is achieved for decisions on matters that are relatively minor, localised and un-contentious whilst providing for input from members at key stages.

5. RESOURCE IMPLICATIONS

- 5.1 There are costs associated with Neighbourhood Planning that will fall to the Council as it has a duty, as the LPA, to support Parish/Town Councils or Neighbourhood Forums. Whilst the nature/extent of this support is for each authority to determine, the Act and Regulations are clear that the cost of the early administration costs of designation and arranging the necessary examination and referendum will fall to the Council to fund.
- 5.2 It is not possible to predict how many communities will come forward to prepare a NDP or NDO but the support costs for Neighbourhood Planning this financial year can be met from the Planning Policy service budget.
- 5.3 A Government grant scheme allows Local Planning Authorities to claim for up to 20 area designations (£100,000) in each financial year 2013 to 2014 and 2014 to 2015. Local planning authorities can also claim for up to 5 forum designations (£25,000) in each financial year. This money recognises the duties that local authorities have in relation to neighbourhood planning in respect of providing advice and assistance; holding an examination; and making the arrangements for a referendum. Future service budgets may need to be adjusted to reflect the work required (and alternative funding streams available) in respect of Neighbourhood Plans.

6. RISK AND MITIGATION

- 6.1 Risk has been considered as part of this report no exceptional or specific high risks have been identified.

7. ISSUES ARISING FROM IMPACT ANALYSIS

7.1 Not applicable. It will be for Town and Parish Councils or Neighbourhood Forums to carry out any necessary impact analysis and assessment of their proposals.

8. CRIME AND DISORDER IMPLICATIONS

8.1 None arising out of this report.

9. COMMENTS OF FINANCIAL SERVICES

9.1 None arising out of this report

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

10.1 As explained in the Report the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 currently require decisions relating to those documents that comprise the development plan, which includes local neighbourhood plans, to be made by Council, subject to any appropriate delegation. It is for Council to determine whether the delegation sought is appropriate.

REPORT TO CONSTITUTION COMMITTEE

REPORT OF: Executive Manager, Corporate

REPORT NO: LDS146

DATE: 23rd March 2015

TITLE:	Agenda Items	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	Council Decision	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Councillor Paul Carpenter – Portfolio Holder for Governance and Communication	
CONTACT OFFICER:	Lucy Youles – Executive Manager, Corporate e-mail: l.youles@southkesteven.gov.uk Tel: 01476 4016105	
INITIAL IMPACT ANALYSIS: Equality and Diversity	Carried out and Referred to in paragraph (7) below Not applicable	Full impact assessment Required: Not applicable
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	The Constitution http://www.southkesteven.gov.uk/index.aspx?articleid=1974	

1. RECOMMENDATIONS

It is recommended that the Constitution Committee consider the current provision in the Constitution for Members to place items on the agendas of meetings for clarification.

2. PURPOSE OF THE REPORT

- 2.1 The purpose of the report is to inform Members of the current provision in the Constitution for items to be placed on the agendas of the meetings.

3. DETAILS OF REPORT

- 3.1 The Constitution Committee has a remit to monitor and review the operation of the Constitution. The Constitution does contain provision for Members to place items on the agendas of various meetings.

3.2 Full Council

At Full Council, any Member may raise a motion on notice in accordance with the Council Procedure Rules set out at Article 4 of the Constitution. In this way Members can debate the issue raised and consider any recommendations or amendments put forward.

In addition, Members are able to raise questions on notice which are referred to a Policy Development Group for consideration.

3.3 Cabinet

In accordance with Article 8 of the Constitution, the Leader may put items on the agenda for Cabinet. Matters may be referred from Scrutiny Committee and Policy Development Groups. Key decisions may only be made by Cabinet in accordance with the published Schedule of Decisions or as a general exception or matter of urgency in accordance with the provisions of the Constitution.

3.4 Scrutiny Committee

Any Member of the Scrutiny Committee is entitled to give notice that they wish an item relevant to the functions of the Committee to be included on its agenda for the next available meeting. Any 5 members of the Council who are not members of the Scrutiny Committee may give written notice to the proper officer that they wish an item to be included on the agenda of the Committee. If the proper officer receives such a notification, then he or she will refer the item for inclusion on the next available agenda of the Committee for consideration.

There is also provision in the Scrutiny Committee Procedure Rules for the Chairman of the Scrutiny Committee or any 5 Members of the Council to “call in” a decision made by the Cabinet, an individual Member of the Cabinet, or by an officer making a decision under delegated authority. In addition, any Member of the Council can refer any matter relating to the functions of the Council that affect

a member's area or an individual who lives and works in that area to the Scrutiny Committee for consideration.

3.5 Policy Development Groups

Any member of a Policy Development Group can request an item relevant to the functions of the Policy Development Group to be included on the agenda for the next available meeting of the Policy Development Group. On receipt of such a request it will be referred to the Cabinet and Policy Development Liaison Group for allocation to an agenda. Any five Members of the Council who are not Members of a Policy Development Group can request an item to be included on the agenda of the relevant Policy Development Group. This will be referred to the Cabinet and Policy Development Liaison Group for inclusion on the next available agenda of the relevant Policy Development Group for consideration.

3.6 Regulatory Committees

There is no provision for Members to put items on the agendas of the Development Control or Licensing Committees. These Committees consider relevant applications which are presented by officers for consideration by Members.

3.7 Governance and Audit Committee and Constitution Committee

There is no provision for Members to put items on the agenda of the Governance and Audit Committee which has defined terms of reference and the Constitution Committee can receive reports from the Monitoring Officer, Chief Executive, Cabinet, Policy Development Committee and Scrutiny Committee proposing amendments to the Constitution.

4. **OTHER OPTIONS CONSIDERED**

No other options have been considered.

5. **RESOURCE IMPLICATIONS**

There are no resource implications relating to this report.

6. **RISK AND MITIGATION**

Risk has been considered as part of this report and any specific high risks are included in the table below:

Category Risk	Action / Controls
None	

7. ISSUES ARISING FROM IMPACT ANALYSIS

None

8. CRIME AND DISORDER IMPLICATIONS

None

9. COMMENTS OF FINANCIAL SERVICES

There are no specific financial comments arising from this report.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

The report sets out the provisions as detailed in the Constitution.

11. COMMENTS OF OTHER RELEVANT SERVICES

None