

CONSTITUTION AND ETHICS COMMITTEE: MINUTES

Date: Tuesday 19th November 2015

Time: 2.00pm – 3.40pm

Place: Kreis Viersen Room, Shire Hall, Cambridge

Present: Councillors M Smith (Chairwoman), P Ashcroft (substituting for Cllr Reeve), D Brown, P Bullen, E Cearn, S Frost (substituting for Cllr McGuire), R Hickford, J Hipkin, K Reynolds and J Scutt

Apologies: Councillors M McGuire, L Nethsingha and P Reeve

84. DECLARATIONS OF INTEREST

None

The Chairwoman welcomed Councillor Cearn to his first meeting of the Committee and thanked Councillor Taylor for her past contribution to its work.

85. MINUTES – 15th SEPTEMBER 2015 AND ACTION LOG

The minutes of the meeting held on 15th September 2015 were confirmed as a correct record and signed by the Chairwoman. The action log was noted.

86. GREATER CAMBRIDGE CITY DEAL EXECUTIVE BOARD DELEGATIONS

The Committee received a report setting out clarifications of the delegations made to the Greater Cambridge City Deal Executive Board and proposing that the Committee recommend to Council that the Constitution be amended to reflect these clarifications.

Members noted that the Executive Board's Terms of Reference currently delegated to the Board exercise of the three constituent Councils' functions 'to the extent necessary to enable the Board to pursue and achieve the objectives of the Greater Cambridge City Deal and to undertake any actions necessary, incidental or ancillary to achieving those objectives'. The functions covered by this wording were considered by officers to be Traffic Regulation Orders (TROs), Compulsory Purchase Orders (CPOs), Side Roads Orders (SROs), Transport and Works Act Orders (TWAOs), and the grant of planning consent; authority to exercise these functions related only to the carrying out of City Deal infrastructure schemes.

Discussing the report, Members

- pointed out that some Members had only received the report on the morning of the meeting, not allowing sufficient time for them properly to consider the matter
- noted that officers of all three Councils had been involved in the preparatory work for the report

- objected that the delegations proposed went beyond what had been previously decided, lacked transparency and democracy, and did not observe the principle of localism; the Leader of the County Council did not represent the Council's Highways and Community Infrastructure Committee
 - queried why the County Council had only four members on the JDCC while Cambridge City and South Cambridgeshire each had six members, and asked that clarification of the rationale for this composition be brought to the Committee's next meeting
- Action required**
- queried the validity of seeking to delegate delegated powers; another member commented that it was entirely usual for councils to delegate their powers
 - pointed out that the proposals under discussion were restricted to City Deal schemes which were very tightly defined, and most of the delegations were of a technical nature; the ability to authorise TROs for example was part of the carrying out of these schemes
 - objected that the Committee was being asked to recommend to Council that powers be removed from committees without giving them the opportunity to discuss the proposal; it would be better to take the proposed changes in their terms of reference to the Economy and Environment Committee and the Highways and Community Infrastructure Committee before Council made any decision on the matter
 - suggested that no useful purpose would be served by referring the matter to the two Policy and Service Committees because the constituent Councils had already agreed the Terms of Reference for the City Deal Joint Assembly and Executive Board
 - suggested that it would be important to the two Policy and Service Committees that they should have had the opportunity to discuss the matter before Council made its decision, and suggested that the Cambridge City Joint Area Committee's attention should also be drawn to the proposals
 - reported that South Cambridgeshire District Council had not yet made any decision on the matter, and noted that Cambridge City Council had already approved the changes to the terms of reference of the Joint Development Control Committee (JDCC) for Cambridge Fringes
 - asked that officers take the opportunity of any delay to look again at the report section on Localism and Local Member involvement and reinforce the importance of engagement with Local Members, particularly in such matters as TROs; although there were Local Members on the City Deal Assembly, the Assembly's role was purely advisory
 - enquired whether the proposal to delay Council's decision on the changes to the Constitution would create any difficulties for emerging City Deal infrastructure schemes. Members were advised that the schemes were at an early stage of development and the process of exercising the functions in question would not start for at least six months.

In reply to a question on process, the Director of Law, Property & Governance advised that it would be permissible to ask the Economy and Environment Committee and the Highways and Community Infrastructure Committee to consider the matter and then refer it direct to Full Council for decision, without requiring further discussion by the Constitution and Ethics.

It was proposed by Councillor Hickford and seconded by Councillor Bullen

- that the Committee make no decision on the proposal to recommend to Council that the delegations made to the Greater Cambridge City Deal Executive Board be clarified
- that a report on the matter be put to the Highways and Community Infrastructure Committee and the Economy and Environment Committee and any subsequent approval for the proposal be taken straight to Full Council.

On being put to the vote, the motion was carried by a majority.

87. REVIEW OF APPEALS AGAINST DISMISSAL POLICY

The Committee received a report setting out the recommendation of the Staffing and Appeals Committee that the Constitution be amended to provide that all appeals against dismissal be heard by a Director sitting alone who would be completely independent of the case, rather than by a three-member panel drawn from the Staffing Appeals Committee membership.

Members noted that this recommendation had arisen from the Staffing and Appeals Committee's consideration of the findings of a review undertaken at the request of the Strategic Management Team (SMT); the review had looked particularly at how poor performance by employees was dealt with, and its findings had included that both employees and junior managers could find the experience of going to a Member appeal panel rather daunting. Currently, about five employees a year from a workforce of 5,500 were dismissed on performance-related grounds. There had been eight appeals against dismissal over the last three years, of which two had been upheld by the Service Appeals Sub-Committee. The matter had come to the Constitution and Ethics Committee for consideration because implementing the changed appeal policy would require amendments to the Constitution.

In the course of discussion, Members were divided on whether they supported the proposed change. In support of the change, Members said that

- a member of the Staffing and Appeals Committee had spoken strongly in favour of the change from the perspective of experience as a long-term employee of the Council; the matter should be referred to Council so that all Members could hear this plea
- without the change, managers would be more reluctant to dismiss because of concern that their decision would be overturned
- the change could be seen as part of enabling the organisation to become more efficient and more managerially stringent; if staffing levels were being reduced, one of the selection criteria should be performance.

Speaking against the proposed change in appeals procedure, two Members drew on their own experience of hearing appeals against dismissal, saying that staff appeared to be satisfied with the current arrangements. One Member recalled a case where it had emerged that there had been defects in how performance had been managed, such as annual appraisals not being carried out regularly; the Sub-Committee had upheld the appeal. In other cases, the appeal would have been decided differently had Members not been involved in hearing it.

Other comments by Members opposing the change included that

- Members were independent of the decision to dismiss, and could be seen to be independent
- the Staffing and Appeals Committee had been divided on whether to support the proposed change
- it would be impossible for a Director not to have some sort of prior knowledge of a case, whereas Members would come to it with a totally clear mind. Officers assured the Committee that the Director hearing the appeal would not have any prior knowledge of the case
- there was already criticism from some Members and some members of the public that the Council was too officer-led
- justice should not only be done but be seen to be done; how would an employee view the matter if the appeal against dismissal were to be determined by another officer of the same body that had made the decision to dismiss.

It was proposed by Councillor D Brown and seconded by Councillor Hickford that the report recommendation be amended [deleted text struck through, new text underlined] to read:

~~The Committee is asked to recommend to Council that~~recommends that full Council consider whether the constitution be amended in accordance with the recommendation of the Staffing and Appeals Committee, that all* appeals against dismissal will be heard by a Director sitting alone who would be completely independent of the case (* except for Chief Officers and where procedures for statutory officers apply).

On being put to the vote, the amendment was carried by a majority.

It was resolved by a majority

to recommend that full Council consider whether the Constitution be amended in accordance with the recommendation of the Staffing and Appeals Committee, that all* appeals against dismissal will be heard by a Director sitting alone who would be completely independent of the case (* except for Chief Officers and where procedures for statutory officers apply).

88. CODE OF CONDUCT: DECLARATION OF MEMBERSHIP OF THE FREEMASONS

The Committee received a report briefing it on the legal position in relation to registration and declaration of membership of the Freemasons, and asking it to consider whether the Code of Conduct should be amended to invite Members to declare their membership of bodies such as clubs, associations and charitable organisations. The Committee was considering the matter at Council's request.

The Chairwoman expressed the Committee's gratitude for the work that had gone into researching the legal position and producing the report. Councillors Bullen and D Brown stated that their declarations of interest already included membership of the Freemasons. Councillor Brown explained that East Cambridgeshire District Council, of which he was a member, required Members to declare membership of the Freemasons, and he declared it on the County register of interests in the interests of consistency.

In the course of discussion, Members expressed the view that the existing Code of Conduct was satisfactory, that to ask Members to declare their membership of a wide range of organisations would be absurd, and that modifying the Code of Conduct in the way proposed would be to invite challenge. One Member observed that the report did not cover the remit from Council, as it made no mention of officers' membership of the Freemasons.

The Committee resolved by a majority to dismiss the report and the recommendation to amend the Code of Conduct.

89. DECISION REVIEW – RESCISSION

The Committee received a report on the rescission of decisions within the first six months of being made; the report also looked at the procedure for cancelling meetings. At its previous meeting, the Committee had noted that the Constitution had different procedures for rescinding decisions made by Council and made by Committees, and had decided to defer further consideration of this until the Cambridge Library Enterprise Centre (CLEC) review had been published. This had been published in October 2015, and had raised the question of whether Council or the committee should have authority to rescind a committee decision.

Members welcomed the report's recommendations, noting that a minimum of five members of a thirteen-member committee would be required to sign a notice of motion to rescind. In discussion, some Members suggested that the number of Members required to sign a notice of motion to rescind a decision by a committee should be half the membership; others disagreed, saying that seven would be too high a number in a committee of thirteen.

It was proposed by Councillor Hickford and seconded by Councillor Frost that the first report recommendation be amended [~~deleted text struck through~~, new text underlined] to read:

revision of Rule 17 of the Committee and Sub-Committee Procedure Rules (Previous Decisions and Motions) to include a requirement that, in order to request that a decision made within the past six months be rescinded, a notice of motion must be signed by at least ~~one-third~~ half of the Members of the relevant Committee.

On being put to the vote, the amendment was carried by a majority. Councillor Scutt requested that her vote against the amendment be recorded.

It was resolved that the Committee recommend to Council:

1. a) revision of Rule 17 of the Committee and Sub-Committee Procedure Rules (Previous Decisions and Motions) to include a requirement that, in order to request that a decision made within the past six months be rescinded, a notice of motion must be signed by at least half of the Members of the relevant Committee
- b) that a decision to rescind a previous resolution should be exempt from the decision review process
2. amendment of Rule 17 of the Committee and Sub-Committee Procedure Rules as set out in Appendix A of the report before Committee
3. amendment of Part 4.1 (Council Procedure Rules) and Part 4.4 of the Constitution (Committee and Sub-Committee Procedure Rules) to include authority for the Monitoring Officer, in consultation with the Chairman/woman of the Council or Committee, to cancel a Council or Committee meeting
4. that the Monitoring Officer, in consultation with the Chairwoman of the Constitution and Ethics Committee, be authorised to make any other minor or consequential amendments to the Constitution necessary for, or incidental to, the implementation of these proposals.

90. ARRANGEMENTS FOR CONDUCTING A MINI REVIEW OF GOVERNANCE PROCEDURES

The Committee received a report inviting it to consider how best to conduct the mini review of governance procedures that had been requested by Council when it had approved modifications to the committee governance procedures in March 2015.

Members agreed that it would be appropriate to conduct the review by email. It was suggested that the email set out the changes made following the previous review, ask Members to say how they felt the changes had improved procedures, and invite Members to identify further matters that needed to be addressed.

It was resolved unanimously

that the mini review be conducted by inviting Members and the Corporate Leadership Team by email to identify any points of difficulty that they have experienced in operating the governance system since 24th March 2015.

91. LOCAL PENSION BOARD – TERMS OF REFERENCE AND STANDING ORDERS

The Committee received a report setting out draft Standing Orders for the Local Pension Board; the recommendation was to adopt these in order to meet the requirements of government Guidance on the creation and operation of Local Pension Boards in England and Wales. Members noted that the Pension Board had recommended that the Committee recommend the Standing Orders to Council.

It was resolved unanimously

to recommend to Council the draft Standing Orders for the Local Pension Board as set out in Appendix B of the report before Committee.

92. SUMMARY OF ACTIVITY IN RELATION TO THE REGULATION OF INVESTIGATORY POWERS ACT 2000

The Committee received a report of Council activity under the Regulation of Investigatory Powers Act 2000 (RIPA) for the financial year 2014-15, as required by the Council's RIPA policy. It noted that the Assistant Surveillance Commissioner had undertaken an inspection of the Council in June 2015. He had found that the Council's RIPA performance had improved substantially since the previous inspection in 2012, and had made a number of recommendations; the Council's RIPA policy would be updated in line with these recommendations.

In discussion, Members broadly welcomed the report but said that it would have been helpful to have been told more about the Assistant Surveillance Commissioner's recommendations. The Chairwoman asked the RIPA Monitoring Officer to send an email to the Committee explaining the changes that were to be made to the Council's RIPA policy.

Action required

The Committee noted the report.

93. A REVIEW OF THE COMPLAINTS RECEIVED UNDER THE MEMBERS' CODE OF CONDUCT TO 6 NOVEMBER 2015

The Committee received a report setting out the number and nature of the complaints received about Members under the Code of Conduct from 11th June 2015 to 6 November 2015.

The Committee noted the report.

94. FORWARD AGENDA PLAN

The Committee reviewed its forward agenda plan and agreed to add the analysis of the findings of the mini review of governance procedures to the agenda for its meeting in February 2016.

95. DATE OF NEXT MEETING

It was noted that the next meeting was due to take place at 2pm on Thursday 4th February 2016; this was a change from the date on the Council Meeting Card.

Chairwoman