

COUNCIL - 25 FEBRUARY 2010

REPORT OF CHIEF EXECUTIVE RE: CONSTITUTION - RESIDUAL ISSUES

1. **PURPOSE OF REPORT**

To seek agreement from Council to further proposed amendments to the Constitution, following a reference from the Council meeting in December 2009.

2. **RECOMMENDATION**

That Council adopt the amendments proposed in Sections 4(b) and (c) of the report within the Constitution with immediate effect.

3. **BACKGROUND TO THE REPORT**

3.1 Council, on 15 December 2009, considered amendments proposed to three items in the Constitution but, being unable to reach an agreed position, referred them for discussion to a meeting of the three Group Leaders and requested that an agreed position be reached on each, for further presentation to the Council at this meeting.

3.2 Whilst the Group Leaders were able to agree on two issues, the third - Access to the Appeals Panel - is referred to Council for an open debate and decision.

4. **PROPOSALS**

(a) Speaking at Planning Committee - No changes are proposed to the Constitution. Members are reminded that the original issue related to 'predetermination'. An explanatory note outlining what constitutes 'predetermination' and 'predisposition' is attached at Appendix A. Provided that Members are only 'predisposed' (have an open mind at the meeting), the current Constitutional arrangements can stand.

(b) Amendments to Motions - must be submitted in typed form to the Monitoring officer by 5pm on the day of meeting and will be copied and circulated immediately to Group Leaders and their Group Members.

(c) Members' Appeals Panel - It is proposed that this Panel will hear appeals against dismissals for Gross Misconduct only and where otherwise required by statute.

Members are advised that the current Appeal arrangements have been agreed with the Trade Unions and no representation for change has been made by them or the staff. Currently a comprehensive appeal procedure is in place for all staff, utilising the management hierarchy.

5. **FINANCIAL IMPLICATIONS (SK)**

None arising from this report.

6. **LEGAL IMPLICATIONS (AB)**

A two-thirds majority of the Council is required to approve changes to the Constitution.

7. **CORPORATE PLAN IMPLICATIONS**

Equality and Fair treatment for all and promotion of a strong and distinctive community.

8. **CONSULTATION**

The Constitution was considered by Council on 15 December 2009 and various other committees/boards (Scrutiny Commission Working Party, Standards Committee, Personnel Committee, Executive and officers of both the Strategic Leadership and Corporate Operations Boards, as well as the Unions).

9. **RISK IMPLICATIONS**

It is the Council's policy to proactively identify all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion, based on the information available, that the significant risks associated with this decision/project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report/decisions were identified from this assessment:

Management of significant (net red) risks		
Risk Description	Mitigating Actions	Owner
Failure to approve the Constitution, leaving lack of clarity for Members, officers and the public	Approval of these items	Louisa Horton

10. **KNOWING YOUR COMMUNITY - EQUALITY AND RURAL IMPLICATIONS**

The Constitution will be applied across all decision-making bodies and will ensure that all decisions are taken in an open and transparent manner.

11. **CORPORATE IMPLICATIONS**

None.

Background papers: Constitution
 Contact officer: Steve Atkinson ext 5606
 Executive Member: Councillor Don Wright

Predisposition and Predetermination

Predetermination and bias have proved to be difficult and controversial issues they are judge-made, common law issues, and not part of the Code of Conduct.

What is predisposition?

It is not a problem for councillors to be predisposed to a particular view. That predisposition can be strong and can be publicly voiced. They may even have been elected specifically because of their views on this particular issue. It might be in favour of or against a particular point of view, for example an application for planning permission.

However, the councillor must be open to the possibility that, however unlikely, they will hear arguments during the debate about the issue that will change their mind about how they intend to vote. As long as they are willing to keep an open mind about the issue they are entitled to take part in any vote on it.

What is predetermination or bias?

Predetermination is where a councillor's mind is closed to the merits of any arguments which differ from their own about a particular issue on which they are making a decision, such as an application for planning permission. The councillor makes a decision on the issue without taking them all into account.

If councillors are involved in making a decision they should avoid giving the appearance that they have conclusively decided how they will vote at the meeting, such that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.

Making the decision

There is an important difference between those councillors who are involved in making a decision and those councillors who are seeking to influence it. This is because councillors who are not involved with making a decision are generally free to speak about how they want that decision to go.

When considering whether there is an appearance of predetermination or bias, councillors who are responsible for making the decision should apply the following test: would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?

It is legitimate for a councillor to be predisposed towards a particular outcome as long as they are prepared to consider all the arguments and points made about the specific issue under consideration.

Commenting before a decision is made

Once a lobby group or advisory body has commented on a matter or application, it is likely that a councillor involved with that body will still be able to take part in making a decision about it. But this is as long as they do not give the appearance of being bound only by the views of that body. If the councillor makes comments which make it clear that they have already made up their mind, they may not take part in the decision.

Predetermination and the Code of Conduct

There is a difference between breaching the Code and being predetermined or biased. It is perfectly possible to act within the Code and still cause a decision you were involved in to be bad for predetermination or bias.

Conclusion

When making administrative decisions like whether or not to grant planning permission, councillors are entitled to have and express their own views and those of persons they represent. However, this is as long as they are prepared to reconsider their position in the light of all the evidence and arguments. They must not give the impression that their mind is closed.