

WARRINGTON Borough Council



To: **Members of the Constitution Committee**
Councillors: C Fitzsimmons (Chair), B Axcell,
B Maher, J Joyce,
P Kennedy

Professor Steven Broomhead
Chief Executive

Town Hall
Sankey Street
Warrington
WA1 1UH

10 January 2014

Constitution Committee; 20 January, 2014 at 4:30 pm
No 3 Committee Room, Town Hall, Warrington

Agenda prepared by Sharon Parker Councillor Services Manager
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AGENDA

Part 1

Items during the consideration of which the meeting is expected to be open to members of the public (including the press) subject to any statutory right of exclusion.

1. **Code of Conduct – Declaration of Interests**
Relevant Authorities (Disclosable Pecuniary Interests)
Regulations 2012

Members are reminded of their responsibility to declare any disclosable pecuniary or non-pecuniary interest which they have in any item of business on the agenda no later than when the item is reached.

2. **Minutes**

Minutes of the meeting of the Sub Committee held April 2013.

3. **Changes to Constitution – Planning and Other Applications**

Report of the Development Manager

4. **Matters referred to Constitution Committee**

Report of the Solicitor to the Council

5. Date of Next Meeting

Page

7 April 2014 at 4.30pm

Part 2

Items of a “confidential or other special nature” during which it is likely that the meeting will not be open to the public and press as there would be a disclosure of exempt information as defined in Section 100I of the Local Government Act 1972.

Information contained in this part 2 comprises the formal notice under Paragraph 5(4) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 that a decision has been taken to hold this part of the meeting in private. Information is also provided against each item heading about the reasons for holding this part of the meeting in private, any representations received and the response to those representations.

If you would like this information provided in another language or format, including large print, Braille, audio or British Sign Language, please call 01925 443322 or ask at the reception desk in Contact Warrington, Horsemarket Street, Warrington

CONSTITUTIONAL SUB-COMMITTEE – 8 April 2013

Present: Councillors C Fitzsimmons (Chair), P Kennedy, B Maher (substitute member for Cllr Bretherton), I Marks (substitute member for Cllr Axcell).

CSC 32 Apologies

Councillors B P Axcell, P Bretherton and J Joyce.

CSC 33 Code of Conduct – Declarations of Interest

There were no declarations of interest received.

CSC 34 Minutes

The Minutes of the meeting held on 21 February 2013 were signed and agreed as a correct record.

CSC 35 Referral from Council

The Sub-Committee received a report of the Solicitor to the Council and Head of Corporate Governance detailing a matter referred by council at its meeting held on 25 March 2013.

At that meeting Councillor Brian Axcell proposed and Councillor I Marks seconded the following Motion:

This Council:

- Notes that the Constitution lays down a maximum of 5 minutes in total for a question, a supplementary question and the answers at a full Council meeting;
- Recognises that if a long answer is given to an original question from a councillor, then there may be insufficient time for the supplementary question and its answer;
- Requests that the Constitution be changed so that the supplementary is not 'timed out' due to a long answer;
- Suggests that consideration be given to a 4 minute limit for the original question and answer and 1 minute for the supplementary and answer.

In discussing the matter the Sub Committee did agree that there was a need for some discretion and flexibility and that the role and duties undertaken by the Mayor in managing debate was key.

Decision: That the Sub Committee agreed that Council Procedure Rule 13.9 be supplemented by guidance indicating that the Mayor should use his/her discretion to manage the length of time allocated to questions and answers with a view to enable supplementary questions to be asked..

CSC 36 The Constitution

The Sub-Committee received a report of the Solicitor to the Council and Head of Corporate Governance detailing proposed revisions to the constitution that will need approval of Council on 20 May 2013.

The Sub-Committee noted that the current constitution was approved by Council on 30 June 2008 and had been revised from time to time, in the light of new legislation and changes to local practices and procedures. The document has also been readopted at successive Annual Council meetings.

The Sub-Committee noted that officers have carried out a thorough review of the current document and a number of amendments were proposed, as follows:-

- Rationalisation of the list of documents which comprises the Policy Framework, to delete documents whose statutory basis has been repealed and to clarify which documents are to be submitted to Council due to local choice;
- Changes to any references to Overview and Scrutiny Committees to reflect new Policy Committee/Scrutiny Committee structure approved by Council on 10 December 2012;
- Urgency matters under the Access to Information Rules to be dealt with by Policy Committee Chairs;
- Call-In protocol amended to apply to the Scrutiny Committee only, with provision for Council to refer matters to a Policy Committee in certain limited circumstances;
- Petitions Scheme revised to provide for an option to refer matters to a Policy Committee in the first instance and for the Scrutiny Committee to review any matters where the petitioner is not satisfied with the authority's response;
- References to the Forward Plan amended to take account of the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012;
- Revised Standards Committee structure and procedures regarding complaints, to reflect the arrangements agreed by Council on 10 September 2012, including delegation to the Monitoring Officer and a Hearings Sub-Committee;
- Inclusion of terms of reference and other consequential amendments, following the establishment of the Police and Crime Panel for Cheshire, as a joint Committee with Cheshire East, Cheshire West and Chester and Halton Councils and delegation to the Monitoring Officer in respect of complaints;
- Inclusion of terms of reference and other consequential amendments, following the establishment of Health and Wellbeing Board;

- Inclusion of statutory officer posts for Director of Public Health and Director of Adult Social Services;
- Various minor and consequential amendments

In discussing the matter the Sub- Committee referred to the role and meetings of the emerging Policy Committee Chairs Forum and in doing so:

- sought assurance that the Sub- Committee would remain the formal conduit for recommendations to Council about changes to terms of reference, but would be happy to receive and consider any views from the Chairs Forum; and
- discussed the merits of the Forum increasing its membership to include one member from each of the opposition parties.

Decision: That the Sub Committee -

- (1) agreed the recommended amendments to the Constitution for consideration by the Audit and Corporate Governance Committee and then Council at their next meetings;
- (2) noted and commented that the new Committee structure had started to bed-in well;
- (3) noted the concerns expressed by some councillors about which Policy Committees that would deal with specific services. In particular 'education' had generated a number of comments from members. The Sub-Committee was of the view that the positioning of these services was consistent with the aim of breaking down 'silo working';
- (4) commented that it was too soon to make any changes to the Policy Committees' terms of reference;
- (5) considered that the current practice of circulating the Leader's Announcements on the day of Council be reviewed and that the Audit and Corporate Governance Committee consider amendment to Council Procedure Rules 7.1 (a) (vi) and (b) (vi) to ensure that the announcements are circulated in sufficient time before Council Meetings to allow members time to read and digest them;
- (6) agreed that Council Procedure Rules 7: Order of Business be amended to clarify that the annual budget meeting of the Council scheduled in March of each year is focussed only on the budget with no other council business being discussed except for matters of urgency agreed in advance with the three Political Group Leaders; and
- (7) asked Council to amend the Constitution to designate the Constitutional Sub Committee as a Committee with the same terms of reference currently enjoyed by the Sub-Committee.

CSC 37 Urgent Item

The Sub Committee agreed to consider the following item as an urgent item in accordance with Section 100B4(b) in order to consider constitutional changes that require decision making by the Audit and Corporate Governance Committee at its meeting on 25 April 2013 and Council at its meeting on 20 May 2013

CSC 38 Amendments to the Terms of Reference of the Development Management Committee and the Planning Applications Sub Committee

The Sub-Committee received a report of the Executive Director Environment and Regeneration which sought changes to the terms of reference of the Development Management Committee and Planning Applications Sub-Committee, and which sought approval to amend the Constitution to enable these changes.

In discussing this matter a member asked if Paragraph 4.4 (vi) (Appendix to the report) meant that applications in which the Council has a significant interest or involving Council land or submitted by a councillor or employee cannot be delegated to an officer for decision. The Solicitor to the Council confirmed this to be so.

A member also asked "can an individual member or a parish council still require that a planning application be considered by Planning Applications Sub-Committee?"

The Solicitor to the Council agreed to provide a written response.

Perhaps we can mop this up in a cover report to Audit and Corporate Governance Committee with the addition of the following that Julian has subsequently looked at but don't go in these minutes

I have now checked the Constitution. The amendments proposed make no change to the existing provision for an elected member or parish council to refer an application to PASC for decision. The current arrangements (see Paragraphs 4.4 (i) and (ii)) allow for referral provided that certain requirements are met, namely:-

- a councillor referral must come from a ward councillor for the relevant ward in which the application site is located;
- any parish or town council may make a referral;
- all referrals must be submitted on the prescribed form;
- all referrals must identify a relevant reason for the referral and identify the relevant Development Plan policies, to the satisfaction of the Strategic Director Environment and Regeneration.

The Sub-Committee may have had in mind the position prior to 1 April 2010. At that time, any member of the council or parish could require the (former) Development Control Committee to consider an application. This scope was narrowed considerably following a review and recommendations by Overview and Scrutiny and approval by Council. A further review in 2012 did not raised any objection to the continuing of the current arrangements.

Decision:

- (1) That the terms of reference of the Development Management Committee and the Planning Applications Sub Committee be amended in accordance with the changes set out in Appendix 1 to the report, and as summarised

below:

- (i) The DMC considers major applications (as defined by CLG) where at least 10 objections have been received at the end of a statutory consultation period and the application is recommended for approval;
 - (ii) The DMC considers applications that are significantly contrary to Development Plan Policy and are recommended for approval;
 - (iii) The DMC considers, at the discretion of the Executive Director of Environment and Regeneration, any application regardless of size of the number of objections, it is deemed appropriate to be referred to DMC;
 - (iv) The DMC receives any application regardless of size or the number of objections, where on a majority vote the PASC deems it appropriate to be referred to the DMC;
 - (v) That the terms of reference of the PASC should be amended to consider planning applications, other than major applications where at least 10 objections have been received at the end of the statutory consultation period and is recommended for approval;
 - (vi) That PASC should receive planning applications submitted by an employee or an elected member of the Council.
- (2) That the constitution be amended to enable the changes detailed in the Appendix to the report.

CSC 39 Date of Next Meeting

10 June 2013.

Signed

Dated.....

WARRINGTON BOROUGH COUNCIL CONSTITUTION COMMITTEE

DATE: 20th January 2013

Report of the: Executive Director – Economic Regeneration, Growth and Environment

Report Author: Daniel Hartley, Development Manager

Contact Details: Email Address: dhartley@warrington.gov.uk

Telephone: 01925 442809

Ward Members: All

CONSTITUTION – DETERMINING PLANNING / OTHER APPLICATIONS

1. PURPOSE OF THE REPORT

- 1.1 At the Planning and Improvement Board meeting on 17th October 2013 and Development Management Committee meeting on 14th November 2013 a number of suggested changes to the Council's Constitution were considered taking into account the need to further improve planning application performance, ensure value for money and minimise the potential for procedural errors.
- 1.2 The following suggestions were considered by both the Planning Improvement Board on 17th October 2013 and Development Management Committee on 14th November 2013:
 - Removal of the requirement for Ward Councillors or Parish / Town Councils to complete a prescribed form when referring applications to committee and no need to refer to development plan policies but still a requirement to give planning reasons.
 - Ward and Parish/Town Councils to refer planning applications to committee within 21 days of being consulted.
 - That only ward Councillors refer applications for consideration at committee and not Parish / Town Councils.
 - Removal of the objection trigger for referral of applications to the Planning Applications Sub Committee but continue to allow Ward Councillors to refer planning applications to committee.
 - Consider one committee (instead of the current two) and every four weeks instead of three.
 - All lawful development certificate applications and variation of condition applications to be considered at officer level.
- 1.3 The Planning Improvement Board and DMC have supported the following changes.
 - Removal of the requirement for Ward Councillors or Parish / Town Councils to complete a prescribed form when referring applications to committee and no

need to refer to development plan policies but still a requirement to give planning reasons.

- Ward and Parish/Town Councils to refer planning applications to committee within 21 days of being consulted.
- All lawful development certificate applications and variation of condition applications to be considered at officer level.
- Removal of the objection trigger for referral of applications to the Planning Applications Sub Committee but continue to allow Ward Councillors to refer planning applications to committee.

1.4 The Planning Improvement Board considered that the number and frequency of planning committee meetings be reviewed mid-2014 as well as the potential for additional changes. This would be considered by DMC and if changes were supported it would then be considered by the Constitution Committee and then Council.

1.5 The proposed changes to the Council's Constitution can be seen in red colour / tracked changes at appendix 1.

2. CONFIDENTIAL OR EXEMPT

2.1 Not confidential or exempt.

3. FINANCIAL CONSIDERATIONS

3.1 Not applicable.

4. RISK ASSESSMENT

4.1 No risks identified.

5. EQUALITY AND DIVERSITY/EQUALITY IMPACT ASSESSMENT

5.1 There are no specific equalities issues in relation to the content of this report.

6. CONSULTATION

6.1 The Planning Improvement Board was consulted on 17th October 2013. The Development Management Committee (DMC) was consulted on 14th November 2013. DMC resolved (as per the minutes) to *“endorse the changes to the Constitution (piloted for 12 Months) as identified at Paragraph 3.2 of the report and as per appendix 1, as recommended by the Planning Improvement Board”*.

7. REASONS FOR RECOMMENDATIONS

7.1 The changes to the Constitution will assist in terms of further improvement relating to planning application performance.

8. RECOMMENDATION

- 8.1 To endorse the proposed changes to the Constitution identified at Paragraph 1.3 and as per appendix 1, as recommended by the Planning Improvement Board and supported by Development Management Committee.

9. BACKGROUND PAPERS

- 9.1 Planning Improvement Board Agenda Papers 17.10.13 and DMC papers 14.11.13.

CONTACTS FOR BACKGROUND PAPERS: Daniel Hartley

Name / E-mail / Telephone

Daniel Hartley
Development Manager
dhartley@warrington.gov.uk, 01925 442809

WARRINGTON BOROUGH COUNCIL

CONSTITUTION COMMITTEE – 20 January 2013

Report of: Solicitor to the Council & Assistant Director
Corporate Governance

Report Author: Timothy Date/Sharon Parker

Contact Details: Email Address: Telephone:
tdate1@warrington.gov.uk 01925 442150
szparker@warrington.gov.uk 01925 442161

Ward Members: All

TITLE OF REPORT: Constitutional Matters

1. PURPOSE

- 1.1 To request the Constitution Committee to consider a series of issues referred to it by Council at its meeting held on 2 December 2013 and by individual Councillors since that meeting.

2. CONFIDENTIAL OR EXEMPT

- 2.1 This report is not confidential or exempt.

3. INTRODUCTION AND BACKGROUND

- 3.1 At the Council meeting held on 2 December 2013 the Leader of the Council made the following statement in relation to the previous Council meeting held on 21st October 2013.

Statement by the Leader

“Colleagues, you will be aware of correspondence from Councillor Bennett regarding a question that was not put to the Full Council Meeting on 21 October 2013. I wish to make it clear that I took the decision not to allow the question to be put because it had not cleared the political processes of my group. My decision was based solely on our agreed political protocol, which all group members have to adhere to. Kevin never submitted his question to the group; he also never contacted any group officers to get it accepted. I therefore had no option other than to ask the officers not to accept the question. The officers concerned provided me with the correct advice and, therefore, are blameless in all this; there was certainly no intention on my part to compromise the political neutrality of officers.”

Following on from this, the whole issue of processes and procedures for any member to raise a question at Full Council should be subject to a discussion and review at the Constitutional Working Party. I will ask my colleague, Councillor Fitzsimmons to put it on their work programme and report back to Full Council."

- 3.2 In addition Councillor Marks moved the following motion, seconded by Councillor Axcell, at the 2nd December Council meeting:

"In the interest of openness and transparency, this Council agrees to investigate the introduction of a standing item at full Council for members to ask questions not previously notified".

- 3.3 Both the statement and motion were referred by the 2nd December Council meeting for consideration by this Committee. In addition the Chair of the Committee wrote to all Council members on 4th December 2013 to establish whether there were any further items that individual members would wish the Committee to consider. The following items were notified to the Chair:

The Mayor

- Neutrality.
- Controlling the meeting
- Checks and balances in his powers

Questions

- Supplementary questions
- Relevance of Questions - Can more be dealt with outside of Council

Extraordinary and Urgent Meetings of the Council

- Procedure for calling a meeting.

4. Statutory Background

- 4.1 In so far as questions to Council are concerned the relevant materials are contained in "Council Procedure Rules (Standing Orders)", (CPR) which, in their turn, form part of the Council's Constitution.
- 4.2 There are two primary statutory references to standing orders in legislation. The first is the requirement in Paragraph 42, Part VI of Schedule 12 of the Local Government Act 1972 which states that "subject to the provisions of this Act a local authority may make standing orders for the regulation of their proceedings and business and may revoke any such orders". Second, Section 37 of the Local Government Act 2000 requires a local authority which is operating executive arrangements must prepare and keep up to date document to be known as the constitution, containing amongst other things a copy of the authority's standing orders for the time being.
- 4.3 The Council clearly complies with these two requirements but the Committee should note that neither the Local Government Act 1972 nor the Local Government Act 2000 is prescriptive upon the content of any standing orders.

5. **Council Questions**

5.1 Council questions from members are addressed in section 13 of the CPR. Currently there is provision for the following:

- 13.1 (a) Questions without notice to the appropriate Executive Board Member or Committee Chair relating to a report or minutes which is before Council.
- 13.1 (b) Questions without notice to the Leader, relating to his announcements. Two minute time limit set. The Constitution is silent on the amount of questions that may be asked of the Leader.
- 13.2 and 13.4 Question with notice to the Executive Board member or Chair of Committee on any matter which relates to the Council's powers and duties or affects the Borough or which relates to the powers and duties or function.
- 13.5 Questions of an urgent nature or that have arisen within three days of the Council meeting and where it has not been possible to give notice under 13.4.

5.2 Councillors Axcell and Marks are seeking an additional route to ask questions that have not been covered by the Constitution. **The Committee's views are sought on this Motion.**

5.3 In giving consideration to Councillor Marks' motion, as set out in paragraph 3.2 above, members of the committee may wish to note that there are at least four circumstances in which questions may be put to the Leader and Executive Board members.

As indicated in paragraph 4.3 there is no statutory guidance upon the considerations a Council should take into account in formulating its standing orders. However, when considering such matters councils may be guided by the comments of the Court of Appeal in the 2000 case of R (Armstrong-Braun) V Flintshire County Council.

5.4 At paragraph 59 of the Courts judgment the following principles were made to guide Councils when considering, the drafting of standing orders.

- The legal and constitutional purposes of the Local Government Act 1972 and the related legislation
- The difference in substantive effect between existing arrangements and any proposed change
- The necessity to regulate the proceedings and business of the council without regard to party or other advantage

5.5 Members may wish to note that CPR are silent upon the involvement of members in the approval of questions such as those submitted under CPR 13.2.

However, CPR 13.2 is clear that questions must satisfy certain broad criteria such as relevance to the Council's powers and duties.

Comments are invited from the Committee on whether there are changes required to the Constitution.

- 5.6 **Supplementary Questions** are permissible under CPR 13.1, 13.2 and 13.3. The supplementary question may be asked without notice. It must relate to the answer just given. A reply may not be given if the supplementary is not related to the question, is unduly lengthy or inappropriate. There is a five minute response time for asking the question, receiving an answer, asking a supplementary and receiving an answer.
- 5.7 A recommendation has been put forward by a Councillor that the Mayor allows the whole supplementary question to be put, before determining whether it is appropriate rather than cutting a member off mid sentence.

The Committee's view are sought on this matter.

- 5.8 The final point raised on Council Questions relates to the amount and need for all questions to go to Council. At the meeting of 2 December there were 18 questions presented which if the full 5 minutes had been used this would have meant an hour and a half dealing with questions. In some Authorities there is a time period set aside for questions.
- Cheshire West and Chester – 30 minutes is set aside, with a restriction of five minutes per question. If there is in excess six are picked randomly.
 - Islington – 20 minutes set aside. No time limit set. Right to ask a supplementary
 - Trafford – overall cap set on the meeting of 2.5 hours. No timing restrictions for questions or amount of questions. Can ask supplementaries.
 - Chichester DC – 40 minutes set for questions but no limit set on the length of time for each question/supplementary.
 - Cornwall – 30 minutes set. Members may only ask one question. No restrictions on timing of each question. Questions not answered a written response is provided and placed in the minutes.
 - Enfield – 30 minute cap with no timing restrictions on the amount of questions or the length of time to respond.
 - Kirkless - 30 minutes set. Any not dealt with are rolled over to the next Cabinet meeting. Council often suspend Standing Orders in order to exceed the 30 min limit so that all questions can be put. Between 20 and 30 are received per meeting.
Three minute limit to ask question, five minutes to answer (these times also apply to the supplementary)

The Committee's view are sought on this matter.

6 The Mayor

6.1 The Appendix to the report provides an overview of the Mayor's powers deriving from legislation, common law and the Constitution.

6.2 The Chair of the meeting becomes invested with authority to regulate and control proceedings. As with any other power, the power must be exercised lawfully proportionately and for a proper purpose. A standing order may be inserted into a Constitution however that provides some checks and balances.

The ruling of the Chair as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. If, however, the chairman acts improperly or mala fide his decisions are not binding, and in a proper case the court will intervene. The proper course for anyone who considers that a ruling of a chairman is erroneous is to seek an order of the court compelling the chairman to convene a fresh meeting: the court will not ordinarily interfere unless the complaint of irregularity comes from a representative majority of the meeting, but if a specific individual right is infringed action could be taken by the party aggrieved.

6.3 There are specific responsibilities for the Chair to undertake:

- The preservation of order
- To ensure proceedings are conducted in a proper manner
- To ascertain the mood of the meeting with regard to any issue which is properly before the meeting.

6.4 The Mayor is also able to exercise a second or casting vote which can mean that they act in a political manner. The purpose of the casting vote is to avoid a deadlock no matter how it arises ie whether they have voted or not. The potential for voting in a political manner has been challenged in the courts through the case *R v Bradford Metropolitan City Council ex parte Wilson (1989)* when the Mayor used his second or casting vote in a hung council in favour of his own party's policies. The Court decided not to interfere where the Lord Mayor had used his second or casting vote honestly and according to his own perception.

The Committees view are sought on this matter.

7. Extraordinary Meetings of the Council

7.1 The term Extraordinary meeting was first mentioned in the Local Government Act 1972. It is a meeting of the Council convened otherwise than by direction of the council as a whole ie either by the chairman on their own initiative or upon the requisition of a prescribed number of council members.

7.2 Within the Constitution (Council Procedure Rule 2.6) an Extraordinary meeting can be called:

- by the Council by resolution at any time
- the Civic Mayor after consultation with Statutory Officers
- any five members of the Council may ask the Civic Mayor. If the Mayor does not agree then those Members can call the meeting by giving notice, in writing, to the Chief Executive.
- The designated Statutory Officers, in consultation with the Civic Mayor may call an extraordinary meeting of the Council in the exercise of their duties and responsibilities, individually or collectively.

7.3 Any meeting called under CPR 2.6 would have to meet the standard requirements in relation to the quorum.

The Committee's view are sought on this matter.

8. FINANCIAL CONSIDERATIONS

8.1 To be accommodated within existing resources.

9 EQUALITY AND DIVERSITY / EQUALITY IMPACT ASSESSMENT

9.1 Relevant Equality Act 2010 considerations are taken into account in the production of the constitution.

10. CONSULTATION

10.1 N/A.

11. REASONS FOR RECOMMENDATION

11.1 To undertake and complete the tasks referred by council.

12. RECOMMENDATION

12.1 That the Committee considers the matters referred to it and reports back to Council in due course.

13. BACKGROUND PAPERS

Council Committee Papers of 21 October and 2 December
Case law - R v Bradford Metropolitan City Council ex parte Wilson (1989) and
Court of Appeal in the 2000 case of R (Armstrong-Braun) V Flintshire County
Council
Knowles on Local Authority Meetings – A Manual of Law and Practice Sixth
Edition – Deborah Upton with Stephen P. Taylor
Warrington Borough Council Constitution

Appendix - Powers and duties held by the Mayor

This note summarises the powers and duties held by the Mayor in relation to the conduct of Council meetings.

There are three primary sources for those powers and duties namely:-

1. Common law
2. The Local Government Act 1972
3. Warrington Borough Council's Constitution, particularly Part 4 Section A - 'Council Procedure Rules'

Common Law

The clearest statement concerning the role of the Mayor comes from the 1894 case National Dwellings Society v Sykes [1894] approved by the Court of Appeal in R v Bradford City Metropolitan Council Ex parte Wilson [1990]. The role is described in the following terms.

“Unquestionably it is the duty of the chairman, and his function, to preserve order, and to take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting”.

Local Government Act 1972

Schedule 12 of the Local Government Act 1972 contains a limited number of provisions relating to Mayoral powers and duties.

Schedule 12 Paragraph 5 – states that the chairman (Mayor) 'shall preside' at the meeting of a Council.

Schedule 12 paragraph 39(2) – provides the person presiding with a second or casting vote in the case of there being an equality of votes.

Schedule 12 Paragraph 41(1) – provides that the person presiding shall sign the minutes at the next following meeting.

WARRINGTON BOROUGH COUNCIL'S CONSTITUTION PART 4 SECTION A COUNCIL PROCEDURE RULES – (STANDING ORDERS)

These Rules are made pursuant to Schedule 12, Paragraph 42 of the Local Government Act 1972.

SO 2.5 - The Civic Mayor can agree to hold a meeting at a place other than Warrington Town Hall

SO 2.6 (ii) - The Civic Mayor may call an extra-ordinary meeting where

he/she deems it necessary and after consultation with the Statutory Officers

- SO 2.8 - Before the start of a Council meeting, those present will stand to receive the Civic Mayor. At the end of the meeting those present will stand whilst the Civic Mayor leaves the Chamber.
- SO 3.2 - The Civic Mayor will preside at meetings of the Council (see Schedule 12 paragraph 5 Local Government Act 1972).
- SO 8.1 - Enables the Civic Mayor to admit urgent business
- SO 14.1 (a) (iii) - Entitles the Civic Mayor to receive copies of intended amendments to Motions
- SO 14.1(e) - Enables the Civic Mayor to extend the five minute limit upon speeches
- SO 14.1(g) - Requires the Civic Mayor to read amended motions when carried
- SO 14.1 (l) (ii) - Enables the Civic Mayor to put a closure motion when a member asks that 'the question now be put'. The Civic Mayor has the discretion to consider (and decide) that the matter has been sufficiently discussed
- SO 14.1 (m) - The ruling of the Civic Mayor on a point of order or on the admissibility of a personal explanation shall not be open to Discussion.
- SO 14.1 (n) - Wherever the Civic Mayor rises during a debate, a Member addressing the council will stop speaking, resume his/her seat and the Council shall be silent.
- SO 14.1 (o) - Unless the Civic Mayor makes an exception a Member addressing the council shall stand.
- SO 18.3 - The Civic Mayor may waive the requirement for Members to be in their designated seats when voting.
- SO 18.5 - Entitles the Civic Mayor to exercise a casting vote (see Schedule 12 Paragraph 39(2) Local Government Act 1972.
- SO 31 - Addresses Member conduct at meetings
- SO 31.1 - The requirement for Members to stand and address the meeting through the Civic Mayor
- SO 31.2 - Requires Members to stop speaking and sit down when the Mayor rises (see also SO 14.1O(s))

- SO 31.3 - In the event of a Member persistently disregarding the Mayor's ruling or behaving improperly, oppressively or by wilfully obstructing the business of the meeting to put the Motion:
- 'That the member named be not further heard'
 - (The Motion, if seconded, shall be put and determined without discussion).
- SO 31.4 - In the event of a member continuing misconduct after a SO 31.3 Motion to move either
- 'That the Member do leave the meeting' or
 - adjourn the meeting for such period he considers expedient'
- SO 31.5 - In the event of general disturbance making the due and orderly dispatch of business impossible to adjourn the meeting for such period he considers expedient.
- SO 31.6 - If a member of the public interrupts proceedings, to issue a warning if the interruption continues to order the person's removal from the meeting.
- SO 42 - This states that the ruling of the person presiding shall not be challenged at any meeting.

Overview

In common with most Constitutions/Standing Orders Warrington Borough Council's rules do not contain a definitive list of powers and duties given the common law position as set out above. This position provides the Mayor with a wide discretion in the conduct of meetings but that discretion has to be exercised proportionately and reasonably .

Warrington's specific Standing Orders are entirely consistent with the common law position.

SO 42 enhances the common law function of the Mayor to enable any meeting to be conducted effectively.

Timothy Date
Solicitor to the Council and Assistant Director Corporate Governance

17 May 2013

Appendix 1 – Proposed changes to Council’s Constitution following discussions at the Planning Improvement Board meeting 17.10.13

Development Management Committee

The following matters are reserved to the Development Management Committee.

All decisions with respect to planning matters (including the granting of planning permissions and decisions with respect to enforcement of planning matters), and tree preservation orders; in the following circumstances:-

- Planning applications for development which are major* development and have given rise to material planning objections received from ten persons or more at the end of the statutory consultation period and the Executive Director for Environment and Regeneration is minded to recommend approval of planning permission.’

** Defined by DCLG as development of 10 or more residential units or 1,000 sq.m or more of industrial, commercial or retail floor space. Where the number of units or floor space is not defined a site area of 1 hectare or more should be used. (Renewal or time extension or Section 73 (Variation of condition) applications are excluded from the definition for the purposes of referral unless considered appropriate by the Executive Director)*

- Any application for development which is significantly contrary to the provisions of the Development Plan and is recommended for approval.
- Any application for development which as a consequence of the scale of development, for example relating to economic impact or impact on conservation areas or for any other reason the Executive Director of -Economic Regeneration, Growth and Environment deems it to be appropriate or expedient for the matter to be referred to the Development Management Committee, regardless of the number of objections received.
- Any application for development which as a consequence of the scale of development, for example relating to economic impact or impact on conservation areas or for any other reason a majority vote of the Planning Application Sub Committee deems it to be appropriate or expedient for the matter to be referred to the Development Management Committee, regardless of the number of objections received.
- Approval of, or consultation upon, planning policy documents in accordance with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and any subsequent amendments thereto.

Planning Application Sub-Committee

The following matters are reserved to the Planning Application Sub-Committee, (a sub-committee of the Development Management Committee).All decisions with respect to planning matters (including the granting of planning permissions, -,

decisions with respect to enforcement of planning matters and tree preservation orders; in the following circumstances:-

i. Any application for development where a notice in writing (**within 21 days of being notified by the Local Planning Authority**) _ has been given to the Strategic Director – of Economic Regeneration, Growth and Environment by a ward councillor for the relevant ward within which the application site is located, requiring the Committee to decide the application and identifying, to the satisfaction of the Strategic Director of - Economic Regeneration, Growth and Environment, relevant planning reasons for the referral.-

ii. Any application for development where a notice in writing (**within 21 days of being notified by the Local Planning Authority**) - has been given to the Strategic Director -of Economic Regeneration, Growth and Environment by a Town or Parish Council which has expressed a view contrary to the officer recommendation and identifying, to the satisfaction of the Strategic Director - of Economic Regeneration, Growth and Environment, a relevant planning reason(s) for referral.-

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iv. Any application for development in which the Council has a significant interest in the proposal or the application relates to Council owned land or is submitted by an employee or elected member of the Council.

v. Any application for development which as a consequence of the scale of objection or for any other reason the Director —of Economic Regeneration, Growth and Environment deems it to be appropriate or expedient for the matter to be referred to the Committee.

vi. Confirmation of a Tree Preservation Order where objection to the proposed order has been received and not been withdrawn.

vii. Determination of an enforcement matter where the Director of Environment and Regeneration considers it appropriate, particularly where there may be significant costs implications for the Council or where the action may have a significant personal or financial implication for those involved.

Note: For the avoidance of doubt the following applications are not reserved for the Development Management Committee or Planning Applications Sub Committee:

Non material amendment applications

- Applications for the Discharge of Planning Conditions
- Prior approval applications
- Lawful Development Certificate Applications
- Section 73 (Variation of Condition) Applications