AUDIT AND GOVERNANCE COMMITTEE

Tuesday, 29 March 2016

Present: Councillor Len Horwood (Chairman)
Councillors Dawlings (Vice-Chairman), Hamilton, Nuttall, Ms Palmer, Scott, Hough, Quigley, Shiels and Coleman

Officers in attendance: Lee Colyer (Director of Finance and Corporate Services), Russell Heppleston (Deputy Head of Audit Partnership), Ade Oyerinde (Grant Thornton), Frankie Smith (Audit Manager, Swale and Tunbridge Wells), Keith Trowell (Senior Lawyer and Deputy Monitoring Officer), Darren Wells (Grant Thornton) and Mike McGeary (Democratic Services Officer)

Other Members in Attendance: Councillors Heasman and Mrs Soyke (both registered speakers), together with Councillors Hills and Sloan

APOLOGIES FOR ABSENCE

AG36/15 Apologies for absence were reported from Mr Hedges and from Parish Councillor Mackenzie.

DECLARATIONS OF INTEREST

AG37/15 Councillors Dawlings and Hamilton both declared an interest in minutes AG41/15 and AG42/15 below, on the basis that they were members of the Planning Committee. They both took part in the discussion and the voting on these two items.

NOTIFICATION OF VISITING MEMBERS WISHING TO SPEAK (IN ACCORDANCE WITH COUNCIL PROCEDURE RULE 18)

AG38/15 Councillors Backhouse, Heasman and Mrs Soyke had all registered their wish to address the Committee, in accordance with Council Procedure Rule 18, in respect of minute AG41/15 below.

MINUTES OF THE MEETING OF THE AUDIT AND GOVERNANCE COMMITTEE DATED 8 DECEMBER 2015

AG39/15 The minutes of the meeting of the Audit and Governance Committee dated 8 December 2015 were submitted.

Mr Quigley referred to minute AG29/15 – update on member complaints. He advised that he had discussed this matter further with John Scarborough, the Head of the Legal Partnership. Mr Quigley added that he was aware of paragraph 13.1 of the complaints guidance, which gave the Head of the Legal Partnership the right to depart from that guidance ‘where expedient’. He added that the ‘maximum time’ element of the guidance often led to that becoming the target time period. Overall, he advised, he was content with the current situation.

The Chairman noted that Mr Quigley was not raising any issues of inaccuracies with the minutes and was satisfied that his comments were merely a statement of his current views on this topic.
RESOLVED – That the minutes of the Audit and Governance Committee dated 8 December 2015 be approved as a correct record.

UPDATE ON MEMBER COMPLAINTS

AG40/15 Keith Trowell, the Senior Lawyer and Deputy Monitoring Officer, presented an update report on complaints received under the authority's Members’ Code of Conduct, for the period ending on 10 March 2016.

Mr Trowell advised that, since the last meeting of the Committee (8 December 2015), no new complaints had been received. However, there were three outstanding complaints reported upon at the December meeting, on which Mr Trowell provided an update report as follows: complaint 1 – which had now been closed due to no response having been received from the complainant, despite prompts from the Monitoring Officer; complaint 2 – where the Monitoring Officer had undertaken an initial assessment, in consultation with the formal Independent Person, and had concluded that there was no evidence to support the allegations made; and complaint 3 – where the complaint had been closed following the resignation of the ‘subject member’ concerned.

Councillor Coleman voiced his concerns over the complaints procedure, adding that he remained unconvinced that it represented a ‘light touch’ process.

RESOLVED – That the update on complaints received under the Members’ Code of Conduct be noted.

PROPOSED CHANGES TO THE CONSTITUTION (PLANNING COMMITTEE AND ITS MEMBERSHIP AND PROCEDURE RULES) AS RECOMMENDED BY THE CONSTITUTIONAL REVIEW WORKING PARTY

AG41/15 Ahead of the officer’s report, Councillors Mrs Soyke and Heasman – who had both registered to speak on this item under the provisions of Council Procedure Rule 18 – addressed the Committee.

Councillor Mrs Soyke, the current Chairman of the Planning Committee, spoke in support of the five recommendations endorsed by the Constitutional Review Working Party. She added that, with the substitutes’ proposal, she was aware that such a system had worked in the past without difficulty, adding that she was content to leave this aspect to the Committee to determine.

Councillor Heasman said that he was not in favour of substitutes, based upon the fact that he knew from personal experience how long it took to gain a proper understanding of the planning function and issues. He felt that, if this aspect were to be approved, substitutes would only be effective if they had a minimum of six months’ working experience of Planning Committee procedures. On the other issues proposed, Councillor Heasman signalled his support.

The Chairman advised that a statement had been received from the other member of the Council who had registered to speak at the meeting, Councillor Backhouse, who had had to give his apologies for absence due to urgent constituency business. The Democratic Services Officer accordingly
read out the statement from Councillor Backhouse, in which he indicated his support for the proposals.

Jane Lynch, the Head of Planning Services, presented a report on a number of changes recommended to the Council's Constitution in respect of the Planning Committee and its membership and procedure rules. She emphasised that the proposed amendments had been fully considered at the meeting of the Constitutional Review Working Party, held on 19 February. A summary of each of the changes is set out below, as agreed (and where appropriate, amended) by the Working Party:

1. An amendment to paragraph 4, Part 3 of the Constitution, the effect of which was to reduce the number of members on the Planning Committee from 16 to 14 (seven each from both the Western and the Eastern areas of the Borough). As part of this proposal, two substitute members would be appointed.

2. A new requirement for inclusion in the Planning Committee Procedure Rules “that members are expected to be in attendance for the duration of the meeting unless, in exceptional circumstances, the Chairman agrees to the early departure of a member from the meeting”.

3. An amendment to existing paragraph 2(iii), first bullet point (a new paragraph 3) under the Planning Committee Procedure Rules: a reduction in the number of public speakers from four to three each for objection and support. Following consultation with the Conservative Group members and the Working Party, it was felt that this proposal might be perceived as stifling the democratic process and, as it would only save a limited amount of time and cost, it had been decided not to pursue this proposal.

4. An amendment to existing paragraph 2(iii), final bullet point, a new paragraph 3 under the Planning Committee Procedure Rules, to clarify that members may address questions of clarification to officers only (rather than speakers) at the conclusion of each representation.

5. A new, additional point under paragraph 2(iii), a proposed new paragraph 3, under the Planning Committee Procedure Rules, stating that, if an application is deferred for any reason to a subsequent Planning Committee meeting, consideration of the item will recommence at the stage of the procedure at which it was deferred, unless there is a material change to the officer recommendation, in which case the full procedure will be followed.

6. A new paragraph 4 to the Planning Committee Procedure Rules, introducing a ‘Planning Safeguard’ whereby if members propose to determine an application contrary to the officer recommendation, and both the Head of Planning Services and the Head of the Legal Partnership (or their respective representatives) agree that the proposed reasons for the decision are not supported on sound planning grounds and that there is a significant likelihood of costs being awarded against the authority at any subsequent appeal, the decision of the Committee will be deferred to a subsequent meeting; this would be in order that officers may give further consideration to the issues raised by members. At the subsequent meeting, only members who attended any site visit pre-arranged by officers will be permitted to ask questions, debate or vote and, as with proposed amendment 5 above, consideration of the item will recommence at the stage of the procedure at which it was
deferred, unless there is a material change to the officer recommendation, in which case the full procedure will be followed.

Mrs Lynch sought the Committee’s support to the proposed changes set out under 1, 2, 4, 5 and 6 above, for approval by the Full Council on 20 April. She added that it was also recommended that the revised arrangements be reviewed after 12 months so that the impact can be reviewed and analysed.

As Chairman of the Constitutional Review Working Party, Mr Quigley advised that he had nothing further to add at this point, adding that the report before the Committee was sufficiently comprehensive.

Councillor Scott referred to the first proposal, relating to the total number of Planning Committee members. He asked why this needed to be a fixed number; he felt that setting a ‘quorum’ of members was preferable, thereby establishing an ideal target number. He also asked further about the justification for establishing substitute members. Both Mrs Lynch and Mr Trowell advised that setting the total number was principally a political decision. Mrs Lynch added that she felt it important from an applicant’s perspective that a good number of views were exchanged in each case, an aspect which the proposed change in total membership would preserve. Mrs Lynch also stated that the Constitution specified both a minimum number (a quorum currently of five) and a maximum number (currently 16, but with a proposal to reduce to 14) of members who must be present for decisions to be made by the Committee.

Mr Trowell also advised that the current proposals preserved the position whereby an equal number of members from the urban and the rural parts of the Borough would be appointed, an element which was important from a political perspective.

Councillor Scott also asked whether, with a councillor majority proposal to refuse an application, there was the opportunity for further discussions with the applicant, who might wish to amend relevant details of his application. Mrs Lynch advised that this aspect related to recommendations 5 and 6 of the report. She stressed that, in most cases, the applicant (or their agent) would have heard the debate at the Committee meeting and thereby would be aware of member concerns. Further discussions with the applicant under these circumstances were a normal process, Mrs Lynch advised.

Councillor Ms Palmer voiced her opposition to the proposals before the Committee. She advised that, at the time when the two Area Planning Committees had first been merged, an assurance had been given that the number on the new Planning Committee would be protected, in order to ensure there was proper rural representation. Councillor Ms Palmer added that she did not believe the proposed 12-month review period would be effective. She also quoted from a recent Planning Inspector’s report on the disputed Highgate Hill site in Hawkhurst, which had recognised the importance of local member knowledge and that it was not unreasonable for members to hold different views to the Planning officers.

Councillor Hamilton asked whether there had been any other high-profile planning cases where the officer recommendation had been overturned. The Chairman advised that he was aware of such cases in the past. Mrs Lynch confirmed this; she added that this was a key element that underlined the
significance of recommendation 6 in that it provided time to re-consider the issue.

With the exception of Councillor Ms Palmer, the Committee endorsed the recommended amendments to the Constitution, as supported by the Constitutional Review Working Party.

RECOMMENDED – That the amendments to the Constitution set out in the report be agreed and recommended to the Full Council for approval.

PROPOSED CHANGES TO THE CONSTITUTION (PLANNING SCHEME OF DELEGATION) AS RECOMMENDED BY THE CONSTITUTIONAL REVIEW WORKING PARTY

AG42/15 Jane Lynch, the Head of Planning Services, presented a report on a number of changes recommended to the Council’s Constitution in respect of the Planning Scheme of Delegation. She advised that the main reason for the proposed changes was that, when the Constitution had been re-drafted in 2013, some of the revisions had omitted wording that remained valid but also significantly increased the threshold for certain types of applications needing to be determined by the Planning Committee where the recommendation was for approval.

Mrs Lynch emphasised that the proposed amendments had been fully considered at the meeting of the Constitutional Review Working Party, held on 19 February. A summary of each of the changes is set out below, as agreed (and where appropriate, amended) by the Working Party:

1. An amendment to paragraph 43, page 4, which removes superfluous wording in order to ensure clarity.

2. Additional wording added to paragraph 1.6 of table 3, to ensure all relevant functions are covered.

3. Changes to paragraph 8.1 on page 7, to remove councillor call-in of notifications (rather than call-in of planning applications, which remains unchanged).

4. To clarify and correct the terminology in paragraph 8.3 on page 8.

5. An amendment to paragraph 8.3(b), page 8, the effect of which was to reduce from 5,000 sq. ft. to 2,000 sq. ft. the floor space threshold, above which planning applications were automatically submitted to the Planning Committee for determination.

6. An amendment to paragraph 8.5, page 8, which would remove the reference to ‘notifications’ for the same reason set out under 3 above.

7. An amendment to paragraphs 10 – 15, page 8, which would return the wording to that used in the previous scheme of delegation, which was the more accurate.

8. Various updates to Schedule 1, page 10 and the Appendix to Table 3, page 13, which would reflect current, relevant Acts.
Mrs Lynch sought the Committee’s support to the proposed changes set out above, for the approval by the Full Council on 20 April.

Members of the Committee accepted the recommended changes, without amendment.

**RESOLVED** – That the amendments to the Constitution set out in the report be agreed and recommended to the Full Council for approval.

**INTERNAL AUDIT PLAN 2016/17**

Russell Heppleston, the Deputy Head of the Audit Partnership, introduced the authority’s proposed Internal Audit Operational Plan for 2016/17, for the Committee’s approval.

Mr Heppleston advised that the Operational Plan set out the proposed audit programme, consisting of assurance-rated projects and other work that the Audit Partnership intend to undertake during 2016/17. He added that the purpose of the report was to provide assurance for the Committee about the control environment of the authority. The internal control environment, Mr Heppleston advised, consisted of the whole network of systems established to manage the Council, including financial as well as other processes. Mr Heppleston added that the Plan also included an update on the longer term programme up to 2018/19.

A copy of the Internal Audit Operational Plan had been appended to the report in full.

Mr Quigley drew attention to the ‘audit resource evaluation 2016/17’ section of the Plan (page 83 of the agenda), specifically the indication that ‘more resource (was) needed this year’. He asked if this meant that there was any audit activity not being undertaken that should be. Mr Heppleston advised that the purpose of this section of the Plan was to signal that it might be necessary to seek additional resources, should the Council’s risk environment demand this.

Mr Quigley also asked where in the Plan an assurance was set out regarding the risks associated with computer ‘ransomware’ attacks. Mr Heppleston advised that this was covered under the ‘ICT security’ element of the Plan.

Councillor Scott asked whether there were any opportunities to reduce the scope or the cost of audit work planned. Mr Heppleston referred to the Collaboration Agreement, which sets out the financial principles for the shared service; he added that there had been no appetite or desire to reduce the level of budget for the shared service.

Mr Colyer advised that there had already been significant savings achieved through the establishment of the Audit Partnership with Maidstone, Swale and Ashford Borough Councils. He added that it was important for the Council to maintain the current level of assurance against risk; any reduction, he felt, might lead to a situation where the external auditors raised concerns and undertook additional work themselves, which would come at much greater cost to the authority.

Mr Shiels voiced his support for the focus of the Plan on the basis of risk. He
asked about work within the ‘unallocated’ part of the Plan, specifically who had the required authority to ‘call-off’ that work at the appropriate time and how the extra value of so doing could be judged. Mr Heppleston advised that this was, in part, covered by the terms of the Audit Charter, which was the subject of a separate report on the agenda. The element of ‘contingency’ would be reported to the Committee, he added, where changes to the work programme would be highlighted.

**RESOLVED –**

(1) That the Committee approves the Internal Audit Plan for 2016/17;

(2) That the Committee notes the longer term plan to 2018/19; and

(3) That the Committee notes the Head of the Audit Partnership’s view that the service is sufficiently resourced to deliver a ‘Head of Audit Opinion’ for 2016/17.

**AUDIT CHARTER 2016/17**

AG44/15 Russell Heppleston, Deputy Head of the Audit Partnership, presented a report which set out the authority’s proposed Audit Charter for 2016/17. He advised that the production of the Charter was a requirement of the Public Sector Internal Audit Standards (Standard 1000).

Members were advised that the purpose of the Charter – a draft copy of which was appended to the report – was to define the internal audit role, authority and responsibility within the Council. Where necessary, it was noted, the Charter was subject to an update each year and the formal approval of the Committee.

Mr Heppleston drew attention to the ‘three lines of defence’ model illustrated in the report, which outlined the assurance framework for the organisation. He added that the Charter updates included more detail on the safeguards to the independence and objectivity of the Internal Audit team, should they be called upon to provide more support for ‘second line of defence’ activities; Mr Heppleston advised that this included work on counter-fraud, risk management and major projects.

**RESOLVED –**

(1) That the Audit and Governance Committee approves the Internal Audit Charter for 2016/17; and

(2) That the Audit and Governance Committee notes the Head of Audit Partnership’s view that the Partnership is operating with sufficient independence and freedom from managerial interference to fulfil its responsibilities in line with Public Sector Internal Audit Standards, and will continue to do so.

**DATA PROTECTION UPDATE**

AG45/15 Frankie Smith, the Audit Manager for Swale and Tunbridge Wells, presented a report which provided an update from Mid-Kent Audit on the Borough Council’s progress towards implementing the recommendations of a review
into data protection. She reminded members that, when the result of this review had been reported in October 2015, the authority’s control measures had been rated as ‘weak’.

Mrs Smith reported on the progress made against the four recommendations set out in the review: one action had been completed; two deferrals had been agreed; and one action was not due until 31 May 2016. She stressed that the deferrals – which both related to the updating of relevant policies – posed no further risk to the Council.

Mr Colyer, the Director of Finance and Corporate Services, reported on the wider training aspect of the report; he advised that a training module had been secured for delivery to all staff, with additional training scheduled for those working within the higher risk areas of activity. Mr Colyer added that, shortly, all confidential information would be taken off-site and would be cross-cut shredded within 24 hours of arrival at the Council’s Depot. This, he added, would ensure that the authority was compliant with the Data Protection Act 1998. He added that a number of other agencies with whom the Council worked had expressed an interest in using this facility, for which a charge would be made.

The Chairman asked whether the Committee’s independent and parish/town council members would be notified of the planned training. Mr Colyer advised that he would ensure this took place, adding that he was keen to support parish and town councils in ensuring compliance with the Data Protection Act over their record-keeping.

Councillor Hamilton advised that she had attended the recent member briefing on data protection issues, which she had found interesting and instructive.

MR Quigley asked about the actions which had been agreed as part of the review of the authority’s data protection ‘weak’ assurance rating. He asked that, if subsequent reports showed further slippages, the original due dates could be shown, so that Committee members could more accurately track progress. This was agreed.

RESOLVED – That the Audit and Governance Committee notes the progress towards implementing the recommendations in Mid-Kent’s report on the Council’s data protection controls.

STRATEGIC RISK UPDATE

Russell Heppleston, the Deputy Head of the Audit Partnership, summarised a report which had been prepared by the Head of the Audit Partnership, which provided an update on how the authority’s strategic risks were being evaluated and controlled.

Members were advised that each of the 10 formal strategic risks had a named ‘risk owner’ allocated, who took the lead in reviewing the evaluation and control process, with periodic reporting to both the Audit and Governance Committee and the Cabinet taking place. Mr Colyer added that the Council’s Management Board also undertook periodic reviews of the identified risks, adding new ones as circumstances developed.
Mr Colyer, the Director of Finance and Corporate Services, drew attention to each of the strategic risks set out as an appendix, where the current controls and mitigations were explained. This also indicated where any movement in the degree of risk had taken place over the last 21 months. He specifically set out the reasons why the risk level in three such cases (1, 4 and 8) had been reduced.

Mr Colyer highlighted risk scenario 4 – ‘unable to plan financially over the longer term’ – described on page 138. He also drew attention to risk scenario 6 – ‘missing something significant’ – set out on page 140; he advised that local government’s high level of openness and transparency in its financial activity had led to a significant increased threat from cyber security attacks from fraudsters and criminals.

Mrs Hough asked whether the risk scores set out were, in technical terms, inherent or residual (the latter taking into account the mitigations listed). Mr Colyer advised that the scores fell into the latter category, with risk owners reviewing the level of risk on a regular basis, leading to occasional changes of score.

Councillor Hamilton thanked Mr Colyer for the explanation and level of reassurance provided.

Mr Quigley asked about the current high levels of mass migration affecting Europe; he enquired to what extent this was considered to be a strategic risk. Mr Colyer advised that, on this particular issue, the authority worked closely with the Home Office, to ensure that migration into the Borough was managed in a controlled manner. He added that the Council had been mandated to provide accommodation for a limited number of families – and to provide relevant support services – within the terms of this collaborative agreement.

Councillor Dawlings referred to risk scenario 8 – ‘inspector decision which challenges housing target v housing supply’. He asked when this particular issue would be reviewed. Mr Colyer advised that he would see if the Head of Planning Services was able to attend the next meeting of the Committee to discuss this topic.

RESOLVED – That the risk management report and arrangements for managing strategic risk be noted.

EXTERNAL AUDIT PLAN 2015/16

AG47/15 Darren Wells, the Director of Grant Thornton, the Council’s external auditors, presented their proposed overview of the planned scope and timing of the audit of the authority’s 2015/16 financial statements. He added that the authority had volunteered to undertake this process early, in order to have the finalised statements ready for presentation to the Committee at its 26 July meeting.

The Chairman asked about the reference to ‘materiality’ which formed part of the Audit Plan on pages 158 and 159 of the agenda. He asked whether its application was a financial or a percentage figure within the overall cost of the audit. Mr Wells advised that it would be a percentage cost, a judgement on the precise sum being made within a specific range.
Mr Quigley sought clarification over the proposed dates of the audit and the outcome being presented to this Committee. Ade Oyerinde, from Grant Thornton, confirmed that it was planned to substantially complete the audit of the financial statements by 30 June 2016 and report the findings to the Committee on 26 July.

Councillor Scott raised a question about ‘materiality’, specifically how the external auditor view might compare with that of the internal audit team. Mr Heppleston advised that the internal audit took a view of the whole of the Council’s financial systems.

Mr Shiels referred to page 156 of the agenda – ‘developments and other requirements relevant to your audit’ (particularly “…the impact of key developments in the sector…”). He asked how the 2015/16 audit might differ from past years. Mr Colyer advised that a view would be taken specifically on what those developments were and how they might have an impact on the governance statement. He added that this detail would be presented as part of the report to this Committee on 26 July.

RESOLVED – That the external Audit Plan be agreed.

FUTURE WORK PROGRAMME 2016

AG48/15 The Committee’s work programme was presented for members’ information.

RESOLVED – That the work programme be noted.

CHAIRMAN’S STATEMENT

AG49/15 In concluding the meeting, the Chairman wished to place on record the Council's grateful thanks to Councillor Mike Mackenzie, one of the parish and town council representatives, for his diligence and commitment over many years, first to the work of the former Standards Committee and, since 2012, the Audit and Governance Committee.

The members of the Committee joined the Chairman in expressing their appreciation and thanks to Councillor Mackenzie, who was standing down as a parish councillor, after 16 years of public service, 14 of which were as Chairman of Brenchley Parish Council.

NOTE: The meeting concluded at 7.25 pm.