CONSTITUTION REVIEW WORKING PARTY

Friday, 19 February 2016

Present: Mr Quigley (Chairman)
Councillors March and Munn

Officers in Attendance: Stephen Baughen, Development Manager, Cheryl Clark, Democratic Services Officer, Jane Lynch, Head of Planning Services, John Scarborough (Head of Legal Partnership) and Keith Trowell (Senior Lawyer and Deputy Monitoring Officer)

Other Members in Attendance: None.

APOLOGIES

1 Apologies for absence were recorded from Councillor Rankin

NOTES FROM THE LAST MEETING DATED 18 JUNE 2015

2 Members of the Working Party approved the notes of the last meeting dated 18 June 2015 as a correct record.

Matters arising were as follows:

i. Councillor Rankin had raised a query in Note 2 about the reasons for call in to Planning Committee. Her recollection was that they included more than just material planning considerations. Mr Trowell confirmed that since that meeting searches had been made through previous versions of the Constitution but no other details had been found.

ii. Mr Trowell advised that the recommended changes to the Planning Delegations agreed at the last meeting had been omitted from the subsequent Audit and Governance Committee in error and would be forwarded for approval at the forthcoming meeting in March 2016.

CONSTITUTION REVIEW WORKING PARTY - TERMS OF REFERENCE

3 The Terms of Reference were referred to by Mr Quigley as a matter of interest, this being his first meeting as Chairman of the Constitution Working Party. He noted that the role and function of the Working Party was to put forward recommendations for changes to the Constitution to the Audit and Governance Committee and subsequently to Full Council.

AMENDMENTS TO THE PLANNING COMMITTEE MEMBERSHIP AND RULES OF PROCEDURE

4 Mrs Lynch introduced the changes proposed as follows:

Proposed change 1 – The reduction to the number of members on the Planning Committee from 16 to 12, comprising 6 from wards in the designated eastern areas of the borough and 6 from wards in the western area of the borough, plus 4 substitutes.
This proposal had arisen at the suggestion of the Portfolio Holder to provide greater consistency in dealing with applications.

Although Councillor Rankin was not present, she had submitted comments and at the discretion of the Chairman, these had been circulated to the attendees. Although Councillor Rankin had no personal issue with reducing the numbers on the Planning Committee, she considered it was a controversial matter as many members felt strongly that their community ought to be represented. She thought the reasoning given for the proposal was thin and formulaic and the case needed to be put better.

Mr Quigley also questioned the rationale and Councillor Munn suggested that consistency was more likely to be obtained if the planning decisions were taken by the same group of people. In clarification of questions from Mr Quigley, Mrs Lynch explained that in making planning decisions, members of the Committee were not actually representing the views of their wards but were making decisions on behalf of the borough as a whole. Consequently, Mr Trowell advised, planning was a regulatory rather than a representative function.

Mr Trowell also explained that, although the eastern and western areas had historically been thought of as rural and urban respectively, the distinction was somewhat arbitrary with, for example, equally rural areas such as Speldhurst & Bidborough being allocated to the western area and urban areas of Paddock Wood in the eastern area. A more cohesive situation had been achieved in recent years through the amalgamation of the area committees into one overall Planning Committee.

Mr Trowell confirmed that there was currently no system of substitution in place, although historically there had been substitutes in Eastern and Western Area Committees in earlier versions of the Constitution.

Councillor Rankin had also suggested that it was not sufficient for Cabinet alone to back this proposal. She thought that unless it was supported by the majority of the main political group on the Council, it was unlikely to succeed. She advised that Councillor March should be able to report the views of the Conservative Group to the CRWP. Councillor March advised that some members of Conservative Group and indeed some members of the public still thought along the line of urban and rural distinctions. Overall, however, she thought that the Group would like to see a good mix of members on Planning Committee and she felt that a compromise might be reached through a more gradual reduction. She therefore thought that an initial reduction of 2 members would be more likely to be acceptable. Councillor Rankin’s email had also stressed that the membership of Planning Committee should ensure a comprehensive geographical spread. It was noted that the ward composition of both eastern and western areas were still clearly specified in the Constitution. In respect of numbers it was accepted that there were too many wards to have one member from each. Also members from some wards would not be feasible if Councillors were either unwilling or unable to sit on planning due to conflicting appointments.

In relation to the subject of substitutes Mrs Lynch stressed the importance of all members being trained and kept up to date in respect of frequent legislative changes. Councillor Munn was concerned that the knowledge of substitutes would be inconsistent with permanent Committee members. In his view, regardless of the availability of technical training, the most important
element was the practical experience gained by actually sitting on the committee, ascertaining the detailed facts of each application, assessing the arguments and making the decisions. Councillor March also agreed that experience came from attending planning meetings and considered it would be a problem if substitutes were not called on for months on end. Mrs Clark (the administrator for Planning Committee) recalled that in practical terms substitutes had infrequently been used in the past but Mr Trowell suggested that the system might work better in line with the proposed notice requirements and Mr Scarborough commented that substitutes were used in other areas. Mrs Lynch also suggested that if members of the CRWP wished they might recommend reduction of the number of committee members without the inclusion of substitutes. Mr Quigley asked what arrangements there were to monitor any transition and it was confirmed that the proposal was that the CRWP would review any changes after a period of one year.

Councillor March, having taken account of the views from Conservative Group the previous evening, suggested changing the proposal to reduce the number of members initially to 14 plus 2 substitutes, with the usage of substitutes to be monitored over the trial period of one year. Also additional wording should be added to ensure a spread of members across the Wards. This amended recommendation was agreed by members of the Working Party.

**Proposed change 2.** – A new requirement that members of the Planning Committee were expected to be in attendance for the duration of the meeting unless there were exceptional circumstances which were agreed with the Chairman.

Mrs Lynch and Mr Trowell explained that this was a new rule to be introduced to avoid public perception that members of the Committee were leaving the meeting early once key items had been considered and were not providing the same level of attention to other applications on the agenda.

Mr Quigley noted that while Councillor Rankin in her email had considered this proposal sensible, she had suggested that it would be more relevantly located within the protocols section of the Constitution. Councillor March also advised that Councillor Rankin had reiterated her views at the Conservative Group the previous evening. She had indicated that this proposal was unnecessary and it was more appropriate for the Leader to deal with members on this sort of matter.

Mr Trowell advised that the intention of including this wording on attendance as a rule of procedure was that it would carry greater weight and gravitas. Mr Scarborough added that it set out the expectation that a member would need to attend for the whole meeting and if they were unable to do so, they might therefore ask a substitute to attend in their place. It was noted that Councillor Rankin’s other point about not voting unless a member was present for the whole item was already covered in the protocol for members of the Planning Committee.

Councillor Munn ascertained that it was already noted in the minutes when members temporarily withdrew from a meeting during consideration of an application or indeed if they left the meeting early. Mrs Clark confirmed this was not an onerous matter to minute.

In summary, Mr Quigley considered that there was no problem with the
principle of this proposal. Councillor Munn had no objection and Councillor March thought it was sensible, providing it could be enforced. Mr Quigley obtained agreement that the proposal could be recommended, subject again to review after a year.

**Proposed Change 3.** – Reduction in the number of public speakers from four to three each for objection and support.

Mrs Lynch explained that the public had ample opportunity to submit their views and comments during the application process. By the time an application was heard at Committee, public speakers were largely only highlighting their previously made views and this could be repetitive. At this point in the process there ought not to be any new issues and if that were the case then it would be more appropriate to defer an application for the new issue to be fully considered in planning terms. Both Mr Trowell and Councillor Munn agreed speakers could be repetitive. Mrs Lynch confirmed no reduction was proposed as far as Parish and Borough Councillors were concerned.

Councillor Munn thought up to three speakers both for and against would be acceptable. Councillor March also thought this sounded reasonable but she advised there was a significant amount of opposition from some Conservative Group members who questioned the reasoning that it would ensure economic, consistent and efficient decision making. A number of Conservative Councillors considered that the public perception would be that the Council was trying to stifle democracy by reducing the number of speakers and she suggested that many of them would therefore vote against any such proposal further down the line.

Mr Quigley commented that it was clear from Councillor Rankin’s email that she did not support this proposal without more information on how often the maximum numbers of speakers registered and what cost savings could be achieved by reducing the numbers. Mr Quigley also failed to comprehend how in terms of the democratic process it could be considered worthwhile saving just 6 minutes when considering a planning application. Councillor Munn deferred to the weight of opinion conveyed by Councillor March and consequently no members of the Working Party were minded to recommend that this proposal be taken forward.

**Proposed Change 4.** – That members might address questions of clarification of officers only (rather than speakers) at the conclusion of the representations.

Mrs Lynch explained that this practice had ceased two years ago and the amendment to the wording was sought simply to support the current process.

Mr Quigley was not familiar with these particular procedures but Councillor Rankin in her email had suggested that if an officer were unable to answer a question then who better to ask than a person who had the information. Councillor March, however, acknowledged that it would be difficult to challenge or verify the view of a member of the public and she understood this proposal was generally supported. Mrs Lynch additionally explained that if an officer were unable to answer a question relating to a material planning matter, it would be likely grounds for consideration of the application to be deferred.
Members of the Working Party supported recommendation of this proposal.

**Proposed Change 6.** – Introduction of a “Planning Safeguard”. The Chairman agreed to take this item out of sequence.

Mrs Lynch advised the purpose of this proposal was to protect the reputation of the Council and avoid costs resulting from appeals consequent upon Committee decisions made contrary to officer recommendation, and where officers considered reasons for refusal would be difficult to sustain. She explained that the weight of public opinion at Committee meetings often put members under pressure and resulting committee decisions could be perverse and difficult to defend in planning terms. The risk was not just to the reputation of the Council but could result in significant costs being awarded as a result. This proposal was to provide a cooling off period by deferring the final decision and any detailed reasons or conditions to a subsequent meeting. Removing repeat public speaking in this case would allow the application to be determined in a controlled fashion. Mr Trowell confirmed that many other Councils had a similar sort of review procedure and Mr Quigley acknowledged the benefit of a “re-think”.

Mrs Lynch further explained the preference of taking the decision back to the Planning Committee rather than to Full Council as it would not be expedient or timely to provide the necessary planning training to all members of the Council. Councillor March confirmed that, in her view, there was no appetite to take this sort of decision at Full Council.

Members of the Working Party supported recommendation of this proposal.

**Proposed Change 5.** – Introduction of a new clause that when an application was deferred to a subsequent Planning Committee there would be no further opportunity for the public or other speakers to address the Committee again, unless there was a material change to the officer recommendation.

Councillor Rankin in her email had expressed concern that if a member had not spoken at the original meeting she did not think they should be precluded from speaking at the subsequent meeting. However, Councillor March thought this might be a misunderstanding and it might just be a matter of clarifying the wording of this recommendation.

The importance of attending officer arranged site visits was also discussed and although Councillor March thought no member should be allowed to take part in determining an application if they had not attended a site visit, Mrs Lynch clarified that this was not being proposed except for items being referred under the “Planning safeguard” condition. It was noted that other than public sites, informal site visits by members were discouraged.

Members of the Working Party supported recommendation of this proposal, subject to the wording being clarified that any speakers who had previously spoken on an application could only do so again if there was a material change to the officer recommendation.

**MINOR AMENDMENTS TO THE CONSTITUTION MADE UNDER THE MONITORING OFFICER’S DELEGATED POWERS**
AMENDMENT TO THE PETITION SCHEME

Mr Scarborough explained that this proposed change to the Constitution had already been signed and approved under his delegated powers as Monitoring Officer and was for information and noting only.

Members of the Working Party noted the change under delegated powers.

AOB AND DATE OF NEXT MEETING

There were no other matters of business.

The date of the next meeting was agreed to take place on Thursday 2 June at 10am.

Future agenda items for consideration would include:

- Overview & Scrutiny Procedure Rules
- Amendment to the Constitution relating to Plans and Strategies
- Officer Employment Rules
- Terms of Reference for General Purposes Committee
- Licensing Officer – Amendments to Scheme of Delegation

NOTE: The meeting concluded at 3.45 pm.