

**Audit and Standards Committee – Monday 16 September 2013
County Council – Thursday 10 October 2013**

**Proposed Changes to the Constitution –
Provisions relating to the Countryside and Rights of Way Panel.**

1. Recommendations

That Council be recommended to approve the following:

1.1 amendments to the Constitution to:

- (a) Permit Local Members to speak (but not vote) on reports on Public Rights of Way within their Division (Section 8 paragraph 2.5.3)
- (b) Provide for the quorum for Sub-Committees/Panels to be set at 2 members (Section 12 paragraph 21.2).

1.2 for consideration of reports on applications for the registration of Common Lands or Town or Village Greens, the Countryside and Rights of Way Panel continue to operate a formal substitute member system in cases where a full member of the Panel is the local member for the Division in which the land is situated.

1.3 in the event of meetings regularly failing to achieve a quorum of members, the introduction of a formal substitute system be considered.

Report of the Director for Democracy, Law and Transformation

2. Background

2.1 I have been asked to report to Panel on the practical application of various aspects of the County Councils Constitution in so far as it relates to the speaking and voting rights of members, attendance by substitute members and the Quorum for meetings.

3. Members' Right to Speak

3.1 General Provisions

3.1.1 The Constitution (section 12 para 25) permits local members to attend and speak (not vote) at committees/sub-committees of which they are not a member on issues which are considered to have a significant effect on their Division.

3.2 Planning Committee

3.2.1 However for the Planning Committee (parent Committee for the Countryside and Rights of Way Panel) there is specific guidance on local members' right to speak.

3.2.2 Alongside the general requirements on members to declare interests as set out in the Code of Conduct, the Planning Committee has specific guidance on members with 'Other Relevant Interest' (ORIs).

An ORI is defined as:

where a decision would affect the finances or well being of a person close to the member to a greater extent than the majority of council tax payers
or

Where the public would reasonably think that the members interest was so significant that it is likely to prejudice the members' judgement of the public interest.

3.2.3 The overriding principle followed by the Planning Committee is the need to demonstrate that decisions are made openly and impartially. Consequently any member with an ORI is entitled to speak but not vote on an item and is required to leave the room after speaking.

3.3 Countryside and Rights of Way Panel

3.3.1 For the Countryside and Rights of Way Panel the provision for local members to speak was amended in 2009 to reflect good practice and legal advice on the Panel's operation and decision making processes.

3.3.2 The 2 main areas of responsibility for the Panel are Public Rights of Way and the Registration of Common Lands or Town or Village Greens. Both of these areas require the Panel to sit in a quasi-judicial capacity (effectively acting as a Tribunal of law and fact).

3.3.3 Section 1 para 2.3 of the Constitution requires any Panel acting in a quasi-judicial manner to accord with the requirements of natural justice and the European Convention of Human Rights.

3.3.4 In view of the above the Constitution has included different rules on members' right to speak at Countryside and Rights of Way Panel meetings.

3.3.5 For Public Rights of Way, under the Constitution any Panel member who is a local member for an item under consideration is allowed to attend but not speak or vote. In practice whether or not the Local Member speaks has been at the discretion of the Chairman. No vote is allowed. Alternatively, it remains

open for the local member to submit written representations – as is the case for any party affected by the item being considered.

3.3.6 It is accepted that the approach in practice differs from that set out in the Constitution. To address this anomaly it is recommended that the Constitution be amended to allow Local Members to speak (but not vote) on Public Rights of Way issues in their Division.

3.3.7 For the Registration of Common Lands or Town or Village Greens the Authority is the Registration Authority and there is no right of appeal (other than to seek a Judicial Review). Counsel has previously advised that no-one (including local members) should be allowed to speak at Panel when an application for Registration is being determined.

3.3.8 It is worth noting at this point that before making a decision on the Registration of Common Lands or Town or Village Greens the Panel commissions an Inspector to hold a non-statutory Inquiry on its behalf. That Inquiry receives representations from all parties and the Inspector's final report and recommendations form part of the report on which the Panel makes its decision.

3.3.9 When the Panel considers a report on the Registration of land which lies within one of its members Divisions, that member is required to stand down and a substitute member is appointed from the formal list.

3.3.10 It is recommended that this approach be maintained and that the operation of a formal substitute members list continue in respect of Registration of Common Lands or Town or Village Green issues.

4. Substitute members

4.1 In requesting this report Panel members queried the absence of any provision for those members listed as formal substitutes to attend a meeting when a full member is simply unable to attend. To date the County Council has not operated a Substitute system. The arguments for and against are:

FOR

- Helps ensure that political balance is maintained at each meeting
- Helps ensure that a quorum is achieved at all meetings
- Helps ensure that a wide range of views will be expressed at all meetings

AGAINST

- Full members of Committees/Panels are purposefully appointed to develop an expertise in, and to take responsibility for, the specific areas dealt with by that Committee/Panel
- Risk of lack of continuity and/or consistency in decision making on specific issues
- Involves the introduction of a tightly managed system with procedures and timescales for notification of attendance by a substitute, agenda dispatch to the substitute etc

- Substitute members do not develop expertise/experience in the Committee/Panels area of responsibility due to sporadic attendance

4.2 To date no particular difficulties have been experienced by any meetings in achieving the necessary quorum (defined below). It is therefore recommended that the position be monitored and the option of a substitute member system be revisited if the absence of a quorum at meetings becomes a regular occurrence.

5. Quorum

5.1 A final area on which information was requested was the provisions in the Constitution relating to the Quorum for meetings.

5.2 The setting of a quorum for Committees/Panels is not a statutory requirement under the Local Government Act 1972 and is therefore decided locally and recorded In the Constitution.

5.3 Presently the Quorum for Committees is one-quarter of its membership (rounded up). For sub-committees there is not a quorum.

5.4 Therefore the Panel (which is effectively a sub-committee) has no set quorum but, because a Committee/Sub-Committee of 1 is not allowed by legislation, the quorum for the Panel is effectively two members. It is recommended that this position be formalised by inclusion in the Constitution.

6. Legal and Equalities Implications

Specific County Council Committees and Panels are required to act in a quasi judicial manner and adhere to the rules of natural justice and equality. To avoid legal challenge there is a need to clearly stipulate when members have a right to speak on issues affecting their Division.

7. Resource and Value for Money Implications

None

8. Risk Implications

See above relating to risk of legal challenge

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