

Mid Devon District Council STANDARDS TASK & FINISH GROUP (Council Procedure Rules Review)

Findings and Recommendations Report

Executive Summary

1. The Task & Finish Group recommends to the Standards Committee (for recommendation onto full Council) that the following amendments be made to the Constitution:
 - (a) The Council Procedure Rule 25.2 be suspended to allow the following amendments to be made to the Constitution at its next meeting.
 - (b) Subject to any further changes to recommendations (c), (d) and (g) below, the Council Procedure Rules be amended as outlined in Appendix B to this report.
 - (c) The Council Procedure Rules regarding Member Questions be amended as set out in Appendix B Rule 10.
 - (d) The Council Procedure Rules regarding Public Questions be amended as set out in Appendix B Rule 8.
 - (e) Members' Business remain on full Council but Members be asked to take account of the guidance on its use set out in this report at paragraph 4.4.
 - (f) The requirement for the Planning Committee to consider an Implications Report (if it proposes to determine an application contrary to policy and officer recommendation) before decision confirmed, be removed.
 - (g) The rules on Substitute Members be amended so that trained substitutes may come from any group where there is no other trained Member in the permanent Members' political group.
 - (h) The practice at full Council for Chairs to have to read out minutes of each committee (including PDGs and Cabinet) be stopped.
2. The Task & Finish Group recommends to the Standards Committee (for its resolution) that Motion 577 not be supported.

Report Detail

1. Introduction

- 1.1 The Task and Finish Group ("T&FG") was set up by its parent Standards Committee on 9 February 2022 to review the Council's Procedure Rules ("CPRs"). All group leaders¹ and a Standards Committee representative were appointed to the T&FG. The Group has been chaired by Cllr Eginton.

¹ Cllr Eginton (Conservative) April to May 2022 and Chair of T&FG; Cllr Deed (Independents Group); Cllr Evans (Conservative) Feb to April 2022; Cllr Clist, Deputy Leader (Lib Dems); Cllr Lloyd (Greens); Cllr Warren (Non Aligned Group)

- 1.2 The CPRs are set out in the Constitution Part 4, Section 1². Although the CPRs were the focus, the Panel noted that there are various other procedure rules covering different meetings and processes for the Council's member decision making and also that some matters raised for consideration did not form part of the CPRs. Consequently it has commented on procedural matters beyond the CPRs where it considered appropriate to do so without detracting from its terms of reference³.
- 1.3 The group also sought the views of other Members. The Chair of the Planning participated in the discussion on proposed changes to the Planning Committee. His investigations into the manner in which other councils' planning committees operated was welcome. In undertaking its review the Group also sought clarification on Motion 577⁴ from the mover of the motion⁵. Following on from the T&FG's preliminary findings on 1 April 2021, the T&FG requested that each group leader⁶ consult their own groups, to seek their group's views of the T&FG's proposed recommendations and identify any other issues for consideration. No other issues or objections were identified beyond those included in Appendix A.
- 1.4 The T&FG has considered all representations made to it before reaching its final recommendations which are set out in this report. The recommendations are supported by the Members of the T&FG unanimously with the exception of Recommendation 2 (Motion 577) which the Non-Aligned Group Leader considered should be accepted.

2. Current Council Procedure Rules

- 2.1 The T&FG noted that the CPRs cover the procedures applicable to full Council meetings but also some elements of the other committees and Policy Development Groups. Where other rules apply (being ones specific to specified committees or PDGs) these are listed below for information.

Full Council	All Council Procedure (Rules 1 to 27)
Cabinet	Council Procedure Rules 5-8, 11, 16.1 (other than 16.4 and 16.5) , 19, 20.1, 21 - 25 All Cabinet Procedure Rules (Rules 1 - 3)
Scrutiny	Council Procedure Rules 4 - 8, 11, 16.1 (other than 16.4 and 16.5), 19, 20.1, 21 - 25 Scrutiny Committee, Audit Committee, Standards Committee and Policy Development Group Procedure Rules (1 - 3, 5 - 7, 10 - 21, 23 - 26)
PDGs	Scrutiny Committee, Audit Committee, Standards Committee and Policy Development Group Procedure Rules (1 - 2, 4 - 6, 8, 10, 12, 14 - 15, 18, 22, 23)
Audit	Scrutiny Committee, Audit Committee, Standards Committee and Policy Development Group Procedure Rules (1 - 2, 5 - 6, 8, 10, 12, 14, 26)
Standards	Scrutiny Committee, Audit Committee, Standards Committee and Policy Development Group Procedure Rules (1 - 2, 5 - 6, 9 - 10)
Planning	Council Procedure Rules 5-8, 11, 16.1 (other than 16.4 and 16.5) , 19, 20.1, 21 - 25

² See [Constitution - MIDDEVON.GOV.UK](http://MIDDEVON.GOV.UK)

³ Agenda for Standards Committee on Wednesday, 9th February, 2022, 6.00 pm - MIDDEVON.GOV.UK

⁴ A Motion "to improve public accountability and to address the inequality of rights of Members of the Council, when compared to members of the public. This Council resolves that: When an enquiry is made by a Member at any formal meeting (verbally, or in writing) and a substantive answer is not given at that meeting, a written response shall be sent to the enquiring member within 10 days. Wherever possible, any written questions submitted in the absence of the Member shall be submitted in advance of the meeting, but a failure to do so will not invalidate that enquiry. A copy of the question(s) and answer(s) will be circulated to members of the committee (or Full Council) and will also attached to the minutes".

⁵ See Appendix A

⁶ This includes the Deputy Group Leader for the Liberal Democrats.

- 2.2 The T&FG recognised that as a whole the CPRs were not always easy to follow and that in itself had created some confusion in the rules as was apparent in the Scrutiny Committee in February 2022. The rules have developed overtime and in response to for example ad hoc amendments having been made overtime whether by individual motions or organisational or legislative changes which did not take account of other rules, some inconsistencies and gaps have crept into the CPRs. Consequently, on considering all the rules, the T&FG concluded the rules should be redrafted in their entirety as set out in Appendix B. With the exceptions set out below, the amendments do not materially change the existing rules. It is considered that the redraft serves to make the rules easier to follow by for example use of sub-headings, more consistency in wording and grouping of issues.
- 2.3 As indicated above, the T&FG also considered in detailed parts of the rules which have raised particular concerns in recent times. Amendments to these rules were highlighted to the political groups. Should any of these recommendations of the T&FG not be resolved, the Monitoring Officer will make appropriate amendments to Appendix B.
- 2.4 For completeness, the T&FG is aware that the Council's current Procedures Rules do not allow amendments to be made without such having been moved and stood adjourned (without discussion) to the next ordinary meeting of the Council⁷. This rule seeks to avoid ad hoc amendments being made 'on the hoof' to the CPRs. However, in instances where the changes have been fully considered in advance (as in the current case), this rule simply delays the Council's decision making. To avoid this unnecessary delay, it is therefore recommended that the relevant CPR be suspended for the meeting of full Council. As this technical requirement is an example of where the rules serve no useful purpose, the redraft of the CPRs in Appendix B accommodates an amendment to the relevant rule to ensure that future proposed CPR amendments which have been the subject of detailed consideration by the Standards Committee (as the committee responsible for overseeing the Constitution) there is requirement for the moved amendment to stand adjourned⁸.

Recommendation 1(a): The Council Procedure Rule 25.2 be suspended to allow the following amendments to be made to the Constitution at its next meeting.

Recommendation 1(b): the Council Procedure Rules be re-drafted as outlined in Appendix B.

3. Members' Questions

- 3.1 The T&FG reflected on the current rules in response to some, albeit limited, concerns about Members' ability to raise questions in Cabinet and / or that the public had more rights than Members to ask questions of a committee or the Cabinet. It also considered the specific representations by the mover of

⁷ Existing CPR 25.2

⁸ See Appendix B at Rule 20.2

Motion 577 which Council had referred to the Standards Committee for consideration.⁹

- 3.2 The group appreciated from the detailed advice sent to all Members¹⁰ in February 2022 that all Members are entitled to speak at full Council; all Members may at full Council ask questions in line with the existing CPR 13; and that councillors who were not members of a particular body did not have any general rights to speak (or therefore ask questions) but could seek the Chair's agreement to do so. It was noted that in addition, Cabinet members could attend Scrutiny Committee meetings where their decisions were 'called in', for the purpose of explaining the decisions under review (but could be asked by the committee to leave¹¹); and when a PDG is considering policy development and review matters, again given their role, relevant Cabinet members were (and should be) allowed to speak¹².
- 3.3 It was also noted that the provisions regarding non-member requests of chairpersons to "speak" proceed on the basis that the questioner is present at the meeting. It was recognised that the public had a right to ask questions only if they were present (remotely or in person) at meetings. Similar to Members' position, in their absence, the public could ask the Chair to read out their question, but the Chair was not required to do so.
- 3.4 The group appreciated that as Members are appointed by their groups to committees (or in the case of ungrouped members direct), as a result of a resolution of full Council, it followed that they only had rights to speak (and vote) if they were appointed to that particular body. If that were not the case, potentially all Members would be able to participate in all committees, potentially creating full Council style participation but for the absence of a right to vote.
- 3.5 After considering the various views on the matter, the T&FG concluded that the existing provisions were largely appropriate. The T&FG were satisfied that non-members' involvement in meetings should remain a matter for Chair's discretion. In response to concerns in the Motion about Member Questions not always being answered in public at meetings, the group considered that it would be helpful to extend the advance notice requirement by one working day – this is currently included in the relevant redrafted rule.

Recommendation 2: Motion 577 regarding Member Questions not be accepted.

Recommendation 1(c): Council Procedure Rules regarding Public Questions be amended as set out in Appendix B Rule 10.

4. Public Questions

- 4.1 The T&FG considered that the right of the public to ask questions (as was the case at full Council) should not be extended to all meetings as proposed. This view was formed because (with the exception of Planning

⁹ See Appendix A Document 1

¹⁰ Letter from MO to all Members dated 11 Feb 2022

¹¹ Existing Committee Procedure Rule 19(h)

¹² Existing Committee Procedure Rule 18(a)

Committee) the excluded committees were limited to those performing a quasi-judicial function (i.e. licensing and standards subcommittee hearings).

- 4.2 The group noted from research undertaken by the Planning Chair and experience across the country, that it was not common place to have public questions at Planning Committee. Instead, as was most often the case for planning committees, interested parties had a specific right to speak. It was noted that the additional 'public question time' right potentially prejudiced planning applicants and prolonged meetings. The rights were only available to residents or businesses based in the district, thereby not open to applicants who were looking to develop in the district for the first time. Further the rights were mainly used by objectors to make lengthy representations where questions were simply added at the end of speeches, thereby prolonging meetings; with 'questioners' using the opportunity to cover points that should have (or had already) been made by them in the course of the statutory consultation period. In support of retaining public questions for Planning Committee, the group noted that on occasion new points were raised by members of the public, but the main advantage of retaining public questions was that the committee was seen to listen to the public and take account of their views on policy and material planning considerations before planning applications were determined.
- 4.3 More generally, it was also recognised that it was often impossible for the Chair (to whom questions were in fact directed and should respond) and difficult for officers (who often answered for the Chair) to answer public questions in committee if advance notice had not been given of the questions.
- 4.4 After considerable debate (and a change from its preliminary view) the group considers that the Council should retain public questions at Planning Committee, with some changes to help address the understandable concerns and improve the use of public questions in the decision making process as well as to effectively engage the public in council work. The proposed redraft of the rule (see Appendix B Rule 8) seeks to improve the general understanding of the rules in the interests of transparency and openness. Further, to help ensure questions can more likely be satisfactorily answered in public at meetings, it recommends that the informal requirement for advance notice of questions from the public be formalised. In response to concerns about how questions have been used in Planning Committee, although it first concluded that there should be a limit to the number of words to 100, to avoid questions becoming lost in a lengthy submission as is currently prevalent in Planning Committee particularly by objectors to planning applications, on reflection it didn't consider such would assist.

Recommendation 1(d): Council Procedure Rule regarding Public Questions be amended as set out in Appendix B Rule 8.

5. Members' Business

- 5.1 Some concerns had been expressed about the use of Members' Business (a standard item on full Council agendas) to make comments which were for example, misleading at others' expense nor matters over which the Council had powers, knowing that there was no right to discuss or respond to the points made at the meeting. It was also noted that overtime such a standard agenda item at full council meetings had become less common place amongst councils.
- 5.2 In terms of considering why the item should remain, the group recognised that the item provided an opportunity for Members to raise good news and points of general public interest; and further that the provisos (e.g. time limits, number of questions, exclusion of matters already covered at the same meeting) were there to ensure that this standard agenda item was manageable.
- 5.3 The group concluded that with some informal guidance for Members from the Monitoring Officer and 'firm and fair' chairmanship, concerns raised about the potential misuse of Members' Business would be sufficient but the matter would be kept under review.
- 5.4 In considering what to include in that guidance the following points are considered relevant, particularly given that there is no right to respond at the time to comments even ones which may inadvertently or otherwise amount to a breach of the Code of Conduct (e.g. by bringing the office or Council into disrepute).
- (a) The ambit of Members' Business is set out in the Council's Procedure Rules.
 - (b) Members may together use the time permitted, to each make (only) one statement or raise one question, lasting no more than two minutes each.
 - (c) Members' Business can only be included on the full Council agenda for up to 15 minutes in total and so no-one group of Members should seek to monopolise that time – the Chair may for example use his discretion to select which Members may speak in that time or stop Members who misuse the agenda item.
 - (d) Each statement / question may only concern a matter over which the Council has powers or duties or which affects the District; and has not been otherwise before the Council for consideration at the same meeting.
 - (e) The topics which may be covered in the relevant statement or question is wide. However the key thing to note is that the matter concerns council business not personal or political group business.
 - (f) The use of Members' Business must be compatible with other parts of the Constitution in particular the high standards of conduct expected of elected members. Members must not for example bring the Council into disrepute or be disrespectful to others.
 - (g) Whilst ensuring that the item doesn't turn into a debate in itself, the Chair may exercise his discretion to rule that inappropriate

comments be withdrawn by the relevant member, an apology given to the Council, or for a short point of correction or clarification to be made in response.

Recommendation 1(e): Members' Business should remain on full Council agendas but Members be asked to take account of the guidance on its use in paragraph 4.4.

6. Planning Committee Procedures

6.1 The following procedural matters specific to the Planning Committee whilst outside of the CPRs were identified for consideration during the T&FG's meetings:

- (a) Value of public questions with separate public rights to speak in committee given quasi-judicial role of Planning Committee;
- (b) Value of implication reports;
- (c) Potential conflict between ward member vs committee planning interests;
- (d) Concerns about length of meetings and how meetings might be more concise without adversely affecting quality of decision making.

6.2 Item (a) was raised due to concerns about the procedures applicable to planning committee meetings. As noted in Section 4 above, the appropriateness of retaining Public Questions (given the specific public speaking rights at committee) were considered in detail.

6.3 Turning to item (b) the group had experience of the use of Implications Report in Planning Committee, which sought to provide a cooling off period for the committee to reflect on the grounds for determining an application contrary to policy and officer recommendation before a decision was confirmed. It did not form part of the CPRs but was a well-established process at the Council. It was reported that in practice particularly in the last 12 months or so, the reports had only delayed decision making and the committee had not changed its view, it being considered as a result by the senior planning officers and committee that there was no value in continuing with the practice. The members of the group noted with appropriate advice that it was reasonable to expect the costs implications to be advised upon and considered reasons to be identified by the advising officers and the committee at the meeting when applications are debated. Furthermore the group noted that in the event that it emerged subsequently that there is no reasonable prospect of the appeal being successfully defended, a further timely committee report may still be requested by the committee to help minimise the costs' risks.

6.4 Regarding (c) it was highlighted that members of the Planning Committee were undertaking a quasi-judicial role, rather than a ward representation role. There would often be conflicts between those roles (e.g. where planning policy supported a development but local residents who the member was duty bound to represent, objected). This had been evident on

several occasions at the Council. In response to such, it was noted that some authorities discouraged or prevented such Members from voting in planning committees. Such Members instead spoke as ward members, having a specific time allocated to them to do so before the committee debated the application and did not participate as a committee member. Concern had also been raised that ward members who were not members of the committee were prejudiced by not being a member of the committee, as they had less rights (to speak) on an application than committee members, therefore prejudicing their residents in comparison to those residents whose member was on the committee.

- 6.5 Although the T&FG recognised the clear case for changing the rules, it considered that Members fully appreciated the potential for conflict and the requirement in the Code not to use their position to improperly advantage or disadvantage another. Consequently, it was considered that such was sufficient to ensure that all members of the committee upheld their overriding responsibility to promote district planning interests above their local ward interests when sitting on the Planning Committee. In conclusion the group did not consider any change was needed.
- 6.6 The group touched upon a variety of other changes that might help cut down on the length of meetings where such did not prejudice the quality of the debate in Planning Committee. These included use of 'call in powers' of Members and the number of deferrals arising from the view that substantive information was not provided in sufficient time for Members to consider such or new information was needed to address concerns raised in committee. These matters were ones which concerned the operation of planning process and have not as such been considered by the T&FG. Whilst noting some issues with the current delegation to the Development Management Manager and Director of Place, it considers that Members would welcome a briefing by the Development Management Manager / Head of Place on the use of ward member call in of applications to committee.

<p>Recommendation 1(f): The requirement for the Planning Committee to consider an Implications Report (if it proposes to determine an application contrary to policy and officer recommendation) before decision confirmed, be removed.</p>
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7. Miscellaneous Amendments to the CPRs

- 7.1 In considering the rules on Committee Substitutes, the group recognised that it was not always possible for members of small groups to identify a replacement where training was a requirement particularly in planning, but also other quasi-judicial committees. Consequently, the group proposes that in such instances substitutes may come from other political groups.
- 7.2 It was noted that the historic practice to present Committee and Cabinet minutes to full Council was not a specific requirement for full Council agendas. The group considered that agendas should still include all the minutes. This will ensure that questions may continue to be raised of the Chairs by Members without notice.

Recommendation 1(g): The rules on Substitute Members be amended so that trained substitutes may come from any group where there is no other trained Member in the permanent Members' political group.¹³

Recommendation 1(h): The practice of full Council for Chairs to have to read out minutes of each committee (including PDGs and Cabinet) be stopped.

10 June 2022

District Solicitor and Monitoring Officer
on behalf of the Task & Finish Group

¹³ See Appendix B Rule 3.1(b)

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