

GOVERNANCE & AUDIT COMMITTEE
29 JANUARY 2013
7.30 - 8.35 PM



Bracknell Forest Borough Council:

Councillors Ward (Chairman), Allen, Ms Brown, Heydon, McCracken, Thompson and Worrall

Independent Member:

Gordon Anderson

Apologies for absence were received from:

Councillor Wade

29. Declarations of Interest

There were no declarations of interest.

30. Minutes from Previous Meeting

RESOLVED that the minutes of the meeting held on 6 November 2012 be approved as a correct record and signed by the Chairman.

31. Annual External Audit Matters

Helen Thompson, Director, Ernst and Young and Catherine Morganti, Manager, attended the meeting to present the certification of claims and returns report for 2011/12 and to advise the Committee of the Annual Audit Fee for 2012/13.

For the period 1 April 2011 to 31 March 2012 three claims and returns had been certified with a total value of £96.207million. It was reported that the certification fee of £72,209 might be reduced.

The Total Code audit fee for 2012/13 was £138,564 which represented a reduction of £92,000 on previous years and this saving had been incorporated within the Council's draft budget proposals. In response to Members' questions, Helen Thompson reported that Ernst and Young had been awarded a five year contract to audit public bodies in the South East and the fee for 2012/13 had been set by the Audit Commission. Subject to legislation, at the end of the contract period, the Council would be able to appoint its external auditors and negotiate fees.

RESOLVED that

1. the External Auditor's Annual Certification Report on claims and returns for 2011/12 be received; and
2. the Annual Audit Fee for 2012/13 be noted.

32. Treasury Management Report

The Chief Technical Accountant presented the Treasury Management Report for review before being presented to Council as part of the overall budget package and resolution on Council Tax for 2013/14.

The report was made up of four documents which together were the Treasury Management Strategy and Policies for 2013/14:

- Capital Prudential Indicators 2013/14-2015/16
- Minimum Revenue Provision (MRP) Policy
- Treasury Management Strategy
- Investment Strategy 2013/14-2015/16

RESOLVED that the Treasury Management Report to be submitted to Council be noted.

33. Recording of Officer Decisions for Executive Functions

Further to Minute 26 of the previous meeting, the Borough Solicitor submitted a report setting out proposed criteria to be applied to determine which officer decisions should be recorded and published in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 ("the Regulations").

It was proposed that officer decisions falling within any of the categories below should be recorded as set out in the Regulations:-

- (a) any decision to incur expenditure or the making of a saving of £10,000 or more
- (b) any decision taken following public consultation
- (c) any decision which would have a material impact upon ten or more persons
- (d) any decision which is taken in exercise of an express delegation made to an officer by the Executive, an Executive Committee or an individual Executive Member
- (e) a decision whether or not to list a property as an Asset of Community Value (the "Community Right to Bid" under the Localism Act)
- (f) a decision whether or not to accept an expression of interest submitted under the Community Right to Challenge

The report acknowledged that it was not possible to predict with any degree of certainty how many decisions would fall within the above categories or what the impact would be of implementing the Regulations as proposed in the report. It would therefore be appropriate for the categories to be reviewed after an appropriate period has elapsed to allow the impact to be gauged.

RESOLVED that the criteria proposed in paragraph 5.5 of the report be approved.

34. Code of Conduct for Members

The Borough Solicitor presented a report which sought the Committee's endorsement of a draft revised Code of Conduct for Members. The draft Code was the outcome of the deliberations of a Member Working Group which had been constituted to formulate a new revised Code of Conduct for Members. The draft Code had been considered by the Standards Committee which had proposed a number of minor amendments.

The Borough Solicitor highlighted three issues arising from the deliberations of the Member Working Group and the Standards Committee:

a) Membership of External Organisations

The Working Group felt that involvement in community groups or public bodies should not preclude a Member from involvement in the decision making process on a matter which affected such a group or body although, if the Member was not appointed by the Council, the Member should, in the interests of transparency, declare the interest. If the Member had been appointed by the Council there should be no requirement to declare any interest as the appointment would already be a matter of public record. Paragraph 10 of the draft Code encapsulated the views of the Working Group relating to such interests.

b) "Affected Interests"

The draft Code faithfully reflected the Act in so far as it relates to Disclosable Pecuniary Interests (paragraph 7 of the draft Code). However, under the Act, only the interest of the Member or his/her spouse or partner falls within the definition of Disclosable Pecuniary Interest. Accordingly, the interest of a child or close friend of the Member does not fall within the definition and therefore a Member would not be infringing the statutory requirements if, for example, he/she participated in a decision whether or not to approve an application for a planning permission or a grant submitted by such a person. Quite obviously, such a scenario would be repugnant to public confidence in the workings of the Council. In order to address that statutory lacuna the draft Code formulates the concept of an "Affected Interest". The consequences under the Code of having an Affected Interest would be identical to those for having a Disclosable Pecuniary Interest and therefore it would not be necessary for Members to make a judgement as to which category an interest fell within.

The Borough Solicitor advised the Committee that an amendment to Standing Orders would be required to the effect that Members declaring an "Affected Interest" must withdraw from a meeting during consideration of the matter.

c) Value of Gifts and Hospitality

The main variation to the draft Code formulated by the Member Working Group which had been proposed by the Standards Committee was that relating to the value of gifts or hospitality received by Members. The previous prescribed Code specified a threshold of £25 (below which gifts/hospitality need not be registered). The Working Group considered that the threshold should be increased to £75. The suggestion gave rise to a significant level of debate at the Standards Committee, many Members of which felt that £75 would be too high a threshold. Although not ruling out an increase the Standards Committee recommended that the threshold should remain at £25 until such time as it was able to give more detailed consideration on receiving a report specifically addressing the issue.

RECOMMENDATIONS to Council

- 1 That the draft Code of Conduct for Members, incorporating the amendments proposed by the Standards Committee, be adopted.
- 2 That Standing Orders be amended to the effect that Members declaring an "Affected Interest" must withdraw from a meeting during consideration of the matter

35. **Scheme of Delegation to Officers - Certificate of Lawful Use**

The Borough Solicitor presented a report which sought the approval of the Committee to an amendment to the Council's Constitution delegating the power to determine applications for Certificates of Lawful Use made under the Town and Country Planning Act 1990 to the Chief Officer: Planning and Transport.

He reported that all applications for Certificates of Lawful Use must only be determined by reference to determined facts and the application of the law to those facts. Considerations as to the planning merits of the development in respect of which such an application was made were entirely irrelevant. There was no discretion upon which Members could bring to bear their planning judgement. Not infrequently such applications involved consideration of extensive amounts of evidence and/or legal issues of considerable complexity so that it was unrealistic to anticipate that all of the relevant material could be placed before the Planning Committee

RECOMMENDED to Council that the Scheme of Delegation to Officers set out in Table 1 Part 2 of the Council's Constitution be amended such that all applications for a Certificate of Lawful Use be determined by the Chief Officer: Planning and Transport (or such other officer within the Planning section as he may in writing delegate such function to).

36. Annual Governance Statement Preparation

The Borough Solicitor advised the Committee that the Council was required to produce an Annual Governance Statement to review annual governance processes and an accompanying Action Plan.

He invited the Committee to consider nominating one of its Members to join the Annual Governance Working Group as it had been helpful to have Member input into the process.

RESOLVED that Councillor Cliff Thompson be appointed to the Annual Governance Working Group.

37. Date of Next Meeting

26 March 2013.

It was agreed to reschedule the 1st October 2013 meeting to 6.30pm on Monday 30 September in order for the accounts to be approved and published by the statutory deadline.

CHAIRMAN