

REPORT OF THE GOVERNANCE COMMITTEE

The Governance Committee met on 4 May 2010. Attendances:

Councillor Jones (Chairman)
Councillors Reid, B. Tidy and Tutt

1. Administrative Boundary Review - Saltdean

1.1 On 1 April 2010 the Local Government Commission for England took over the role of conducting reviews of local authority electoral arrangements from the Boundary Committee for England. The Commission may undertake reviews of the external boundary of a district or County either at the request of the department for Communities and local Government, at the request of a local council or on its own initiative.

1.2 The County Council has received a request dated 4 March 2010 from the Saltdean Residents' Association, a copy of which is attached at Appendix 1 circulated separately to Members. This seeks to:

- Gain the support of the County Council in the aim to unify Saltdean within one council area and communicate this decision to the Boundary Committee.
- Ask that a survey be undertaken prior to the Boundary Committee starting their review.

1.3 Both Lewes District Council, and Brighton & Hove City Council have agreed to a request for a review of the administrative boundary of Lewes District Council and Brighton & Hove City Council in the area of Saltdean. With regard to carrying out a survey of residents, Lewes District Council have agreed to a local referendum or survey being carried out at the appropriate time, having due regard to guidance, provided the administration and cost of such referendum/survey is shared equally between Lewes District Council, Brighton & Hove City Council and the County Council. Brighton & Hove City Council have also agreed to conduct a local referendum or survey at the appropriate time, but have not been explicit about meeting the costs of this.

1.4 The Commission is already aware of the request for an administrative review. It is understood that the Commission do not yet have timescales or a programme of reviews in place and in any event, the earliest that they will start any reviews would be April 2011. There is no guarantee that Saltdean would have priority at that point. The Commission is currently working up some guidance around how reviews will be conducted and who will be involved and how. The Commission do not expect the guidance to be ready until much later in the year and they will then consult local authorities on it.

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1.5 The Committee **recommends** the County Council to –

- ☆ request an administrative boundary review of the Saltdean area; and;
- ☆ agree that no commitment is given at this stage to contributing to the cost of a survey of referendum pending further information and guidance from the Local Boundary Commission.

2. Designation of Statutory Scrutiny officer

2.1 The Local Democracy, Economic Development and Construction Act 2009 requires local authorities which operate Executive arrangements, with the exception of district councils in areas where there is a county council, to designate one of their officers as a scrutiny officer to support the work of the authority's overview and scrutiny committees.

2.2 The Act further sets out the functions that a scrutiny officer may undertake. These are:

- (a) to promote the role of the authority's overview and scrutiny committees;
- (b) to provide support to the authority's overview and scrutiny committees and the members of those committees;
- (c) to provide support and guidance to: (i) members of the authority; (ii) members of the executive of the authority, and (iii) officers of the authority in relation to the functions of the authority's overview and scrutiny committee or committees.

2.3 The Act specifies the titles of officers who may not be designated as the scrutiny officer. These are: the head of the authority's paid service; the authority's monitoring officer and the authority's chief finance officer.

2.4 The Centre for Public Scrutiny (CfPS) advises that the intention for the statutory scrutiny officer post is that it should be someone "actually involved in scrutiny" - a current scrutiny officer or scrutiny manager. Such an approach would, in their view, give those actually delivering scrutiny a suitably high profile in the authority.

2.5 In East Sussex County Council there is a well established scrutiny function with a successful track record. The scrutiny officer team comprises a scrutiny manager, two scrutiny lead officers and a scrutiny support officer. The scrutiny manager undertakes the functions required of the statutory scrutiny officer described above and therefore it is intended that that Scrutiny Manager will initially be designated as the statutory scrutiny officer.

2.6 No structural changes to the scrutiny arrangements in the County Council are required to comply with the latest overview and scrutiny and related legislation.

2.7 The Committee **recommends** the County Council to –

☆ delegate to the Assistant Director, Legal and Democratic authority to designate the Statutory Scrutiny Officer

3. Petitions Scheme

3.1 Sections 10 to 22 of The Local Democracy, Economic Development and Construction Act 2009 include requirements for every principal local authority in respect of petitions.

3.2 A consultation exercise on the draft guidance relating to petitions was completed on 24 February 2010 and on Tuesday 30 March 2010, the Government published statutory guidance (attached as Appendix 2 and circulated separately to Members) and a commencement order for the petitions scheme. This requires the Council to have a petitions scheme (in line with the statutory guidance) in place by 15 June 2010. The implementation of e-petitions has been delayed to 15 December 2010.

3.3 The main statutory requirements that will relate to the Council are as follows -

i) To have an on-line petition facility which allows anyone to set up a petition on the Council's system, and allows anyone to 'sign' the petition on-line by 15 December 2010.

ii) To adopt a petition scheme (by 15 June 2010) which sets out how the Council will acknowledge receipt of petitions and advise the petition organiser how the petition will be dealt with. The Act requires that the petition scheme define three categories of petition, and set a minimum number of signatures for each type of petition.

3.4 For 'ordinary petitions', the guidance is that the Council should treat as a petition anything which identifies itself as a petition, or which a reasonable person would regard as a petition.

3.5 'Petitions requiring Debate' must be reported to full Council for debate, and the Council will be able to set a higher number of signatures as the threshold for this type of petition. It should be noted that currently the guidance states that the threshold must be no higher than 5% of the local population (this would be 25,495 being 5% of 509,900 - the Office of Statistics figure for the population of East Sussex in 2008), although the Government expects that in most cases the threshold should be much lower. It is also recommended that the petition scheme be reviewed after 12 months and the threshold be reviewed if no debates have been triggered. It is proposed that the County Council adopts the figure of 5000 based on the recommendation in the Model Code (the Model Code) annexed to the statutory guidance

3.6 'Petitions to hold an officer to account' must name a senior officer and will trigger an open meeting of an appropriate Overview and Scrutiny Committee at which the officer may be questioned by the Committee in relation to his or her actions on a particular matter. The Council will be able to set a different threshold number of signatures for this type of petition, although again, a low threshold is recommended. It is proposed that the County Council adopts the figure of 2500 based on the recommendation in the Model Code The names and

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job titles of officers to which this will apply must be contained with the petition scheme.

3.7 To fall in with the requirements of the scheme, the petition must relate to a function of the authority or, to 'an improvement in the economic, social or environmental well-being of the authority's area to which any of the authority's partner authorities could contribute'. The Act provides that a petition may be signed by anyone who lives, works or studies in the authority's area.

3.8 The Council will be able to reject petitions that are considered to be vexatious, abusive or otherwise inappropriate.

3.9 The new petition scheme does not apply to petitions relating to planning decisions and licensing decisions are also specifically excluded.

3.10 Where the petition organiser is not satisfied by the actions taken by the authority in response to a petition, the petition scheme must give a right of appeal to a relevant Overview and Scrutiny Committee. That Committee will then be able to review the decision and action taken by way of a response and make appropriate recommendations.

3.11 The petitions scheme needs to be finalised by 15 June 2010. The County Council also needs to have the on-line petition facility in place by 15 December 2010. The County Council is exploring with Public-I, the company that provides webcasting facilities for the Council, the setting up of a shared e-petition system with the District and Borough Councils, except for Wealden District Council, which wishes to adopt its own e-petition system.

3.12 Costs will arise from increased work for Council officers, time at Council meetings, overview and scrutiny committees and the set up costs for e-petitions. The initial development costs for the e-petition software is estimated to be £6.5k. Under the new burdens principles, the government has confirmed that additional funding will be made available to local authorities. The exact amount for East Sussex County Council is not yet known, but it is expected to be a per capita share of the £4.7million available nationally in 2010/11. It is expected that funding for future years will be incorporated into the revenue support grant.

3.13 The Committee **recommends to** the County Council

☆ that the Chief Executive, in consultation with the political group leaders, be authorized to prepare a Petitions Scheme based on the Model Scheme as annexed to the statutory guidance 'Listening to communities: Statutory guidance on the duty to respond to petitions' for implementation by 15 June 2010; and

☆ that the authority be delegated to the Chief Executive to make consequential amendments to the Council's Constitution.

4. Delegation of non-material amendments to existing planning permission

4.1 New provisions under s96A of the Town and Country Planning Act 1990 have come into force which allows for non-material amendments to be made to

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planning applications. The current scheme of delegation does not cater for this new form of application.

4.2 In 2007 the Government consulted on allowing minor amendments to be made to planning permissions. At the time there was no simple procedure for dealing with an amendment to a planning permission once granted. Following the consultation s96A was inserted into the Town and Country Planning Act 1990 (“the Act”). This provides a mechanism to make non-material amendments to an existing planning permission. It has a simple application procedure and a quick decision time of 28 days.

4.3 “Non-material amendment” is not defined in statute and officers will have to decide depending on the context of the overall scheme. The local planning authority (“LPA”) must be satisfied that the amendment is non-material in order to allow the application.

4.4 The application for non-material amendments has to be made to the LPA that granted the permission and by a person with an interest in the land, or someone acting on their behalf and will be recorded in the planning register.

4.5 The process can also be used to amend planning conditions, provided that those changes are non-material. New conditions can be imposed or existing conditions can be removed or altered.

4.6 As it is not an application for planning permission, and any change sought is non-material, the LPA has a discretion in whether and how they choose to inform other persons and seek their views. Government guidance does not anticipate that consultation or publicity will be necessary in the majority of cases. Before making an application the applicant must notify the landowner, or tenant of an agricultural holding, of their intention to apply following which there is a period of 14 days to make representations to the LPA.

4.7 When determining an application the LPA must have regard to the effect of the change, together with any other previous changes made. The LPA must also take into account any representations received.

4.8 The decision should be issued in writing within 28 days of receipt of the application, or longer period by prior agreement in writing, and should cover only the s96A application as the original planning permission still stands.

4.9 Applicants for a s96A non-material amendment to a planning permission enjoy a right of appeal for non-determination. As far as the County Council is concerned, the rights of appeal would only relate to County Matters. Such an appeal must be made within six months of the end of the determination period. There is also a right of appeal from a refusal to grant a s96A application.

4.10 These changes have been brought about to encourage greater flexibility for planning permissions. At present there is delegated authority to determine applications for planning permission amounting to minor variations to applications already granted, but no specific delegation for the new legislation and powers contained in s96A of the Act. Delegation of the power to determine these matters was considered by the Planning Committee on 21 April 2010

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when it was resolved “to recommend to the Governance Committee and the County Council that the Director of Transport and Environment be delegated authority to determine applications for non-material amendments to planning permissions made under s96 Town and Country Planning Act 1990.”

4.11 The Committee **recommends** to the County Council

☆ that the Director of Transport and Environment be delegated authority to determine applications for non-material amendments to planning permissions made under the Town and Country Planning Act 1990

PETER JONES
Chairman

4 May 2010