

## **EAST DEVON DISTRICT COUNCIL**

### **Minutes of the Extraordinary Virtual meeting of Council held at Online via the Zoom App on 24 June 2020**

#### **Attendance list at end of document**

The meeting started at 6.00 pm and ended at 7.42 pm

#### **79 Public speaking**

The Chair, Councillor Cathy Gardner, welcomed members of the public, Councillors and Honorary Aldermen to East Devon District Council's virtual Extraordinary Council meeting on Wednesday 24<sup>th</sup> June 2020, and also anyone watching the meeting via the live-streaming.

She reminded everyone that all participants were taking part remotely and the meeting was being viewed online and recorded.

She started the meeting by having a roll call of everyone present, and confirmed that the meeting was quorate.

There were no members of the public who had registered to speak.

#### **80 Declarations of interest**

There were no declarations of interest.

#### **81 Governance Arrangements and committee appointments for the remainder of the Civic Year (2020/21)**

Members were asked to consider a report by the Chief Executive and Monitoring Officer to enable the Council to formalise its governance arrangements for the remainder of the civic year following the cancellation of the Annual Meeting due to COVID-19 and the change in the administration of the Council.

The Chair stated that she would move the recommendations one by one, inviting comments and agreement, but would commence by inviting the Monitoring Officer, Henry Gordon Lennox, to explain the procedural nature of the meeting and the different parts of the report.

He began by explaining the various Parts to the report and then bringing members' attention to further changes to the constitution which had been circulated to all Councillors prior to the meeting, but which he would introduce verbally for the benefit of the public.

Specifically that;

Article 6 (Portfolio Areas of Responsibility) had been changed with the addition of 'Car Parks' and 'Beach Huts' to Asset & Economy, and,

'Development Management & Building Control' had moved to the Strategic Planning Portfolio.

Part 3 Section 2 (List of Joint Bodies) had been changed with the addition of the 'East Devon Traveller Forum'.

Part 3 Section 2 (Cabinet Terms of Reference), Paragraph 6 had been amended so that 'consider' replaced with 'receive reports on'.

Part 3 Section 2 (Leader's Delegations to Portfolio Holders), Paragraph 5 of General Delegations to all Portfolio Holders had been amended to include 'and virement requests in accordance with the Financial Regulations'.

The Chair stated that she would move to **PART A Recommendation 1**, and a number of members indicated that they wanted to speak.

Cllr Arnott made some introductory comments about some of the changes indicated in the report, and what he considered were gaps in the current Constitution, such as whether members of Cabinet should sit on regulatory committees such as Planning and Licensing & Enforcement. He also said that he had been in contact with Paul Clarke, Regional Local Government Association (LGA) representative for the South West on these matters, who had suggested that the Planning Advisory Service of the LGA could conduct a review of the Council's Planning Service. This had been put to the Chief Executive who had confirmed that this would be helpful.

Cllr Ingham commented that the issue of whether Cabinet members should be appointed to Planning and Licensing Committees had been raised in 2019 with the Chief Executive and Monitoring Officer, whose advice was not to do so. Their advice had been accepted on the basis that there was no need to take an unnecessary risk by doing so.

Cllr Thomas stated that there was an immediate requirement to be addressed and he wanted to propose an amendment to the Constitution which was consistent with the advice of the Monitoring Officer and practice followed by successive recent Council administrations.

He wanted to propose an amendment relating to Part 3 responsibilities for functions; section 2 covering terms of reference and delegated powers of committees. He also proposed that an identical amendment to be appended to the membership section of both Licensing & Enforcement Committee on page 65, and the Planning Committee on page 71. The proposed amendment is that serving members of Cabinet are not eligible for appointment to this committee.

The Independents had been asking the Leader a number of questions on this matter over recent weeks and had received a response from him last evening, and further professional advice from the Monitoring Officer. Cllr Thomas stated that the current Leader had received the same advice as previous Leaders and it was an issue about the wisdom of appointing serving Cabinet members to sit on Planning and Licensing committees. Whilst it is correct that there is no formal, legal or constitutional restriction for Cabinet members not to do so, it may not be in the best interests of the Council to do so.

He concluded that in his view, the Constitution as drafted does not offer the Council adequate protection against the ill-advised move to appoint Cabinet members to Planning or Licensing. Any such appointments to these decision making bodies defined

specifically as being outside the role of Cabinet will be against the consistent long standing professional advice of the Monitoring Officer.

He requested a recorded vote on the amendment.

The Chair asked for a seconder for the amendment from Cllr Thomas.

Cllr Susie Bond seconded the amendment.

The Chair asked for a seconder for the request for a recorded vote by Cllr Thomas.

Cllr Bond seconded the request for a recorded vote.

During the debate on this issue further comments and questions from councillors included the following;

- Packing regulatory committees with Cabinet members was reversing the transparency of committees and decision making.
- Damage to the perception held by the public would be regardless of who was in control of the Council and would reflect on the Council overall.
- Cabinet members without Portfolio responsibilities could take on a role on a regulatory committee but would create an untenable position for the Council otherwise.
- Could those in favour of an amendment name a Council where a judicial review has been brought, since the advice is clear that Planning Committee should not be chaired by the Leader or Cabinet member with portfolio, and this has not been suggested.
- Licensing Committee is a quasi-judicial committee whose decisions can be challenged. It also sets fees and charges which makes it inappropriate for the Portfolio Holders for Finance and Democracy & Transparency to sit on them due to their specific areas of responsibility.
- Does filling the committees with Cabinet members increase the risk of decisions of the Council being challenged – yes.
- Why has the Leader decided to go against the advice of the Monitoring Officer to take a different course of action which could bring the Council into disrepute?
- One of the biggest problems for Licensing and Planning Committees to address is that of pre-determination. Putting Cabinet members onto them would have the effect of gagging them by acknowledging potential conflicts of interest.
- The setting up of an Investigating & Disciplinary Committee is welcome, and would be good to include all members of the Senior Management Team.
- The role of Lead members appear to have been abandoned and could be referred to the Overview Committee or Governance Review Working Party for review.
- What is the relevance of the Planning Advisory Service undertaking a review, to the immediate matter in hand?
- References were made to Teignbridge District Council (TDC) which has Cabinet members on its regulatory committees without it causing any difficulties.
- Some members wanted to clarify that the Chair of any committee can determine the date and times when meetings are held in order to make attendance easier for its members. However, personal circumstances cannot be used in a debate when all members chose to become Councillors and were duly elected equally.
- EDDC does not have to follow what Teignbridge DC does, nor does it have to take any advice given, but it should take account of public perception, and is an independent Council regardless of others it is in partnership with.

The Chair asked the Leader to address any comments or questions before she moved to a vote.

Cllr Arnott responded by saying that Lead members may not have gone forever, but they did not appear to have done much previously.

He went on to confirm that he and colleagues had not ignored the advice of the Monitoring Officer and were in agreement that it was not possible for himself as Leader, or Cllr Ledger to sit on the Planning Committee, but everything else put forward was legal and appropriate.

He said that the Monitoring Officer had provided a legal opinion but had also pointed out that it was for members to decide. The issue about having the LGA's Planning Advisory Service on board was that their view was that Cabinet members could sit on regulatory committees, so they would be welcome to come into discussions with the Chief Executive, Monitoring Officer and planning Officers alongside members with a view to making suggestions or recommendations.

He concluded by saying that if the amendment is agreed, he would have to nominate other members from the Group who had other considerable commitments apart from attending committees.

The Chair now asked the Monitoring Officer to confirm the position.

He stated that an amendment had been proposed to Council which would be to include wording within the terms of reference section to the Constitution dealing with committees along the lines of the following;

That serving members of Cabinet are not eligible to sit on the Planning and Licensing & Enforcement committees,

If agreed this would be inserted into the draft Constitution which Council would then have a subsequent vote to approve.

However, members needed to decide first on whether to have a recorded vote.

The Chair invited members to vote in favour of having a recorded vote on the amendment proposal by using the electronic green 'Yes' button, or the red 'No' button if they were against it.

This was carried by a majority of those present, so the vote on the proposed amendment would be recorded.

The Chair invited those present to vote on the recommendation.

**Recorded vote:**

Councillors Mike Allen, Megan Armstrong, Jess Bailey, Dean Barrow, Kevin Blakey, Kim Bloxham, Susie Bond, Colin Brown, Fred Caygill, Maddy Chapman, Iain Chubb, Bruce De Saram, Alan Dent, Peter Faithfull, Marcus Hartnell, Sam Hawkins, Mike Howe, Stuart Hughes, Ben Ingham, Paul Jarvis, David Key, Andrew Moulding, Helen Parr, Geoff Pook, Philip Skinner, Ian Thomas, Phil Twiss, Chris Wright, Tom Wright - voted in favour – 29.

Councillor Paul Arnott, Denise Bickley, Sarah Chamberlain, Andrew Colman, Olly Davey, Steve Gazzard, Paul Hayward, Nick Hookway, Sarah Jackson, Luke Jeffery, Vicky Johns, Geoff Jung, Fabian King, Dan Ledger, John Loudoun, Dawn Manley, Kathy McLauchlan, Paul Millar, Geoff Pratt, Val Ranger, Marianne Rixson, Jack Rowland,

Eleanor Rylance, Brenda Taylor, Joe Whibley, Tony Woodward, Eileen Wragg - against  
– 27

Councillor Cathy Gardner – abstain – 1

The proposed amendment was therefore carried.

The Monitoring Officer confirmed that the recommendation was to approve the Constitution as set out in the agenda papers, and including those amendments he verbally presented at the meeting, the amendment proposed by Cllr Thomas to the effect that serving Cabinet members were not eligible to sit as members of Planning and Licensing & Enforcement Committees and that delegated authority be given to the Monitoring Officer to make consequential changes to the Constitution in consultation with the Leader and Portfolio Holder for Democracy & Transparency.

The Chair invited members to vote in favour of the recommendation or not by using the electronic 'Yes' or 'No' buttons.

This was carried by a majority of those present.

**RESOLVED:**

That Council,

Approves the amended Constitution to determine the committee structure, their size and terms of reference and the scheme of delegations, including those amendments introduced verbally by the Monitoring Officer at the meeting, that serving Cabinet members were not eligible to sit as members of Planning and Licensing & Enforcement Committees and that delegated authority be given to the Monitoring Officer to make consequential changes to the Constitution in consultation with the Leader and Portfolio Holder for Democracy & Transparency.

The Chair now moved to **PART B RECOMMENDATION 2.**

The Monitoring Officer clarified that the reason for confirming the formal opposition was due to the constitutional issues arising from the political balance changing since May 2019 and membership being tight, and that the Chair of Scrutiny Committee was nominated by the main opposition group. This change to the Constitution was to regularise an outstanding issue.

The Chair invited members to vote in favour of the recommendation or not by using the electronic 'Yes' or 'No' buttons.

This was carried by a majority of those present.

**RESOLVED;**

That Council confirms the Conservative Group as the formal opposition.

The Chair now moved to **PART C RECOMMENDATIONS 3 and 4**, and invited members to vote by using the electronic 'Yes' or 'No' buttons.

The recommendations were carried by a majority of those present.

**RESOLVED;**

That Council,

Approves the allocation to different political groups of seats on the overview, regulatory and other committees as follows;

Democratic Alliance Group	24 members	40%	<b>46 seats</b>
Conservative Group	20 members	33.33%	<b>38 seats</b>
Independent Progressive Group	7 members	11.67%	<b>13 seats</b>
The Independents	5 members	8.33%	<b>10 seats</b>
Cranbrook Voice	3 members	5%	<b>6 seats</b>
Independent	1	1.67%	<b>0 seats</b>
<b>TOTALS</b>	<b>60</b>	<b>100</b>	<b>113</b>

And the allocation of seats on individual overview, scrutiny, regulatory and other committees as set out in *Appendix 1*.

The Chair now moved to **PART D RECOMMENDATION 5**.

The Monitoring Officer informed members that this would need to be amended because one of the Tenant Representatives on the Housing Review Board, Pat Gore, had resigned from the position today, creating a vacancy which would need to be filled when the COVID 19 situation enabled this to happen.

The Chair invited members to vote by using the electronic 'Yes' or 'No' buttons.

The recommendations were carried by a majority of those present.

**RESOLVED;**

That Council,

Agrees the Membership of the Standards Committee and Housing Review Board (as detailed in Part D of this report) and approves an extension of the appointment of the Independent Person for a further year.

The Chair moved to **PART E RECOMMENDATION 6**.

The Monitoring Officer confirmed that given changes agreed during the meeting, further changes to the membership of committees were likely to be required from Cllr Arnott.

Accordingly he advised that the recommendation would include the addition of delegated authority to the Monitoring Officer to revise the Planning Committee and Licensing & Enforcement Committee positions to replace Cabinet members in liaison with the Group Leader.

The Chair then invited members to vote.

The recommendation was carried by a majority of those present.

**RESOLVED;**

That Council,

Approves the appointments of Councillors to committees as set out in the table in *Appendix 2*, giving delegated authority to the Monitoring Officer to revise the Planning Committee and Licensing & Enforcement Committee positions to replace Cabinet members in liaison with the Group Leader.

The Chair moved to **PART F RECOMMENDATION 7.**

The Monitoring Officer confirmed that this would also require changes now that Cllr Wragg was precluded from taking up the position of Chair of the Planning Committee. He advised that Council approve the position as stated, giving delegated authority to him to work with the Leader to approve the Chair of the Planning Committee outside the meeting.

The Chair then invited members to vote.

The recommendation was carried by a majority of those present.

**RESOLVED;**

That Council,

Approves the appointments of the Chairs and Vice-Chairs of the committees as set out in *Appendix 3*, giving delegated authority to him to work with the Leader to approve the Chair of the Planning Committee outside the meeting.

The Chair declared the end of business and closed the meeting at 19.42pm.

**Attendance List**  
**Councillors present:**

V Ranger (Vice-Chairman)	D Ledger	S Gazzard
M Armstrong	J Rowland	M Hartnell
P Jarvis	J Loudoun	M Howe
S Jackson	D Bickley	B Ingham
S Chamberlain	J Bailey	G Jung
P Arnott	K McLauchlan	H Parr
K Blakey	P Hayward	G Pook
K Bloxham	S Hawkins	G Pratt
F King	A Moulding	M Rixson
F Caygill	D Key	E Rylance
A Colman	C Gardner (Chair)	B De Saram
P Millar	S Bond	P Skinner
T Woodward	D Manley	B Taylor
N Hookway	C Brown	I Thomas
C Wright	M Chapman	P Twiss
O Davey	I Chubb	E Wragg
J Whibley	A Dent	T Wright
L Jeffery	D Barrow	
V Johns	P Faithfull	

**Officers in attendance:**

Mark Williams, Chief Executive  
Simon Davey, Strategic Lead Finance  
John Golding, Strategic Lead Housing, Health and Environment  
Henry Gordon Lennox, Strategic Lead Governance and Licensing  
Susan Howl, Democratic Services Manager  
Wendy Harris, Democratic Services Officer  
Sarah Jenkins, Democratic Services Officer

**Councillor apologies:**

T McCollum  
I Hall  
C Pepper

Chairman .....

Date: .....