

NORTH LINCOLNSHIRE COUNCIL

COUNCIL

MINUTES

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To report on the constitutional implications of votes taken on Motions at the Council Meetings held on 8 July and 23 September 2009.

2. BACKGROUND INFORMATION

- 2.1 At the council meeting held on 8 July this year a Motion relating to 20 mph zones around schools was considered.
- 2.2 The electronic vote on the Motion resulted in it being carried by 21 votes to 20 votes.
- 2.3 It was claimed that the electronic system had not recorded one member's vote.
- 2.4 The relevant Procedure Rule (D1.23(b)) provides as follows:-
- "If an electronic voting system is used members will have a period of 30 seconds in which to register their votes. At the expiry of the period of 30 seconds the votes then registered will be binding. Members who have not registered a vote at that time will be taken to have abstained."
- 2.5 The Procedure Rule was invoked in spite of a strong challenge which was made.
- 2.6 At the next meeting of the Council (23 September) the minutes of the meeting of 8 July came forward to be approved as a correct record.
- 2.7 In the event a Motion was carried approving the minutes with the exception of those relating to the Motion on 20 mph zones around schools.
- 2.8 Later in that meeting under a Substantive Motion relating to wind energy the votes of two other members were claimed not to have been recorded by the electronic system.
- 2.9 Again despite a strong challenge the Procedure Rule set out above was invoked.

2.10 Since the September meeting consideration has been given to the working of the Procedure Rules, the content of Motions to Council under the executive model of local government and possible improvements to the electronic recording system.

2.11 These issues are dealt with individually as follows:-

Procedure Rules

2.12 In view of the same occurrence at successive meetings but involving different members an important issue has now arisen affecting the confidence which members and the public have in the decision making process.

2.13 Robust decision making processes are at the core of a democratically elected body such as the Council and any uncertainty as to the correctness of the way in which any decision has been reached is damaging to the reputation of such a body. The fact that the effectiveness of the system has been questioned on two separate occasions in relation to the votes of three different members undermines confidence in the accuracy of the votes as a whole on the two issues.

2.14 Accordingly bearing in mind the circumstances which have arisen there is a strong argument to the effect that the Procedure Rule should be interpreted as applying only when it is clear that the electronic voting system is operating correctly i.e. implied into the Procedure Rule is the premise that the system is working effectively.

2.15 As indicated above that premise cannot be relied on with any confidence in these two circumstances. Accordingly those votes could be questioned and would be capable of challenge by judicial review application to the High Court.

2.16 In view of this uncertainty there is doubt concerning the decisions and that doubt should be remedied by a new vote being taken.

2.17 For ease of reference the relevant Motions are attached in the Appendix to this report.

Executive Functions

2.18 The Procedure Rule relating to Motions (D1.16(c)) provides as follows:-

"Every Motion must relate to some matter in which the Council have powers or duties or which affects or may affect the area of the Council, its inhabitants or visitors."

2.19 It has to be borne in mind that the Local Government Act 2000 redefined decision making in the authority and removed it from a council/committee system to an executive model. In so doing the role

of the Council now focuses on the Policy Framework, the Budget and other miscellaneous functions set out in legislation e.g. adopting byelaws. The functions of the council as Highway Authority, Road Safety Authority and generally in relation to highways and traffic management are delegated to the Cabinet Member for Highways and Planning Services i.e. as executive functions.

- 2.20 Accordingly as highways and traffic management matters (such as 20 mph school zones) are classified as executive functions they may not be discharged by the council at a council meeting.
- 2.21 This does not mean that such matters cannot be discussed at the council meeting but that any "decision" on such an executive matter would be "advisory" only.
- 2.22 In effect in such circumstances the correct course of action would be for a report to be prepared by the relevant Service Director to the relevant Cabinet Member setting out the implications of progressing the matter, the views of members and the role of the Cabinet Member in making the final decision.
- 2.23 This reasoning is strengthened by considerations relating to robust decision making in that Motions are put before the council without accompanying reports setting out options, resources and other implications, results of consultations etc which are standard in reports to Cabinet Members and Cabinet thereby enabling decisions to be made against a full background of relevant information. This format has been devised to safeguard the Council from challenges to its decision making systems. Accordingly making decisions outside the adopted report format would be in breach of the risk controls set out in the Council's Management of Strategic Risks (No. 2 Failure of Decision Making Process).

Voting System

- 2.24 The current electronic system is subject to 6 monthly checks by Auditel. Discussions have been held with the company which has confirmed that as an aid to members the system can be improved by an indicator being visible on the main screen which would enable members to observe the 30 second count down taking place.
- 2.25 As regards the Procedure Rule which relates to electronic voting (see paragraph 2.4 above) in order to be better equipped to deal with any similar occurrences were they to happen in the future the Rule could be amended so as to include after the word 'binding'

"unless a member immediately indicates to the Mayor that his/her vote has not been registered or has been incorrectly registered whereupon the Mayor will ask for the vote to be retaken by show of hands."

3. OPTIONS FOR CONSIDERATION

3.1 To accept/note the proposals/position set out in paragraphs 2.16, 2.22, 2.24 and 2.25.

3.2 This option would safeguard and strengthen the council's voting and decision making processes.

4. RESOURCE IMPLICATIONS (FINANCE, STAFFING, PROPERTY, IT)

4.1 The IT implications are set out in paragraph 2.24.

5. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

5.1 Adoption of the recommendations would be in line with statutory requirements and legal advice.

6. OUTCOMES OF CONSULTATION

6.1 Consultation has taken place with relevant officers and counsel.

7. RECOMMENDATIONS

7.1 That new votes be taken in respect of the Motion relating to 20 mph zones (meeting held on 8 July 2009) and the Substantive Motion relating to wind energy (meeting held on 23 September 2009).

7.2 That the position and processes relating to Motions dealing with executive functions be noted.

7.3 That the improvement to the current electronic system as set out in paragraph 2.24 be implemented.

7.4 That Procedure Rule D1.23 (b) be amended as set out in paragraph 2.25 of this report.

SERVICE DIRECTOR LEGAL AND DEMOCRATIC

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5 January 2009
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Background Papers used in the preparation of this report - None

8 JULY, 2009

MOTION - COUNCILLOR MRS REDFERN - 20 MPH ZONES

"The council welcomes the government's increased support for 20 mph zones outside schools and commits to consulting parents and teachers and wherever there is support, implementing zones around primary, junior and infants schools across the district within a two year period."

23 SEPTEMBER, 2009

SUBSTANTIVE MOTION - COUNCILLOR M GRANT - WIND ENERGY

"This council recognises the need for using new technology, such as wind turbines, to meet our future energy needs. This council notes the controlling group has written to Ian Cawsey MP who, in turn, has written to the Minister regarding this issue. Council also gives a commitment to raising the issue at regional and sub-regional planning boards.

This council wholeheartedly supports any moves that put the welfare of local residents and the environment above those seeking monetary gain. Furthermore, this council denounces any political group in North Lincolnshire that receives donations from those who benefit from allowing wind turbines to be built on their land."