



Constitution Improvement Working Group

Fourth Report



Foreword

In our previous reports we examined the role of the full Council Meeting and suggested ways to make it more relevant to the interests and concerns of our residents. (*1st Report November 2008*). We recommended in our Second Report, reforms to the Portfolio Holder meeting process and as a result the need for more than 40 meetings was eliminated by improving the pre scrutiny arrangements in the PDS meetings. (*2nd Report January 2009*). Our Third Report made a number of proposals to ensure that the Council constitution was reformed with the changes required under the 2007 Local Government Act; these included greater powers and a four year term for the Leader. We also made a range of recommendations with regard to our scrutiny process particularly with regard to the Local Strategic Partnership and its boards. (*3rd Report October 2009*)

Much has happened in the past three years. The creation of a Coalition government, following the inconclusive General Election result in May 2010, has brought new legislation in the shape of the Localism Act which seeks to derogate powers to local communities from central and local government. There has been a welcome reduction in some of the burdens placed on local government and a loosening of the previous standards regime. We have already made recommendations in this area and these have been incorporated into the Council's new arrangements for maintaining and monitoring the conduct of members and officers.

This Report examines whether, in the light of the new dispensation to allow local councils to revert to the committee system, Bromley should discontinue the current governance arrangements. We also examine the case for area committees with regard to planning and environment matters. Although the majority of the working group were opposed to such committees we have left the matter for the full council to debate and decide. Although we have made it clear that we do not support a revision to the committee system we are mindful of the importance that the full council meeting played in that system in making key decisions and we therefore make a number of important recommendations aimed at widening the decision making role of the full council. We have also asked the Director of Resources and Legal Services to prepare detailed recommendations for the working group to consider early in the new year so that we can make further detailed recommendations for incorporation in a revised constitution at the Annual meeting in May 2013.

The other major set of recommendations relates to the use of new technology. The public sector has lagged behind commercial companies in seizing the opportunities for improved communications with customers and for reducing unnecessary costs. The New Technology Working Party, chaired by Cllr Will Harmer, reported nearly two years ago - we have built on a number of their recommendations insofar as they relate to the way members use new

technology. We have also asked the New IT working group to advise on the detailed changes towards the introduction of a relatively paperless system in 2014 through the use of tablets, taking account of the trialled use by some members in the present council.

A handwritten signature in black ink, reading "Nicholas Bennett". The signature is written in a cursive style with a long horizontal stroke at the end.

Councillor Nicholas Bennett JP
Chairman
Constitution Improvement Working Group
October 2012

Acknowledgements

The Working Group thanks Mark Bowen, Director of Resources, Sue Essler, Head of ICT and Graham Walton, Democratic Services Manager, for their assistance and support in preparing this report.

FOURTH REPORT OF THE CONSTITUTION IMPROVEMENT WORKING GROUP

General Purposes & Licensing Committee - 23rd October 2012
Executive - 24th October 2012
Council - 12th November 2012

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1. Executive Summary – Recommendations

- 1. That the present Leader and Cabinet system of governance be retained.**
- 2. That, where PDS Committees and Portfolio Holders are in agreement, Portfolio Holders may make decisions without formal pre-decision scrutiny in the following categories and circumstances -**
 - Appointments made by the Portfolio Holder where there is only one nominee;**
 - Local schemes costing less than £35k which affect only one Ward, e.g.: minor highways schemes, where all Ward Councillors are in support of the proposal;**
 - Contract extensions where there are no performance issues with the contractor and the contract includes a provision to extend;**
 - Contract awards where there has been a gateway review and the award is proposed to be made to the most economically advantageous tenderer;**
 - Contract waivers where the Portfolio Holder is required to agree single tender action;**
 - Matters considered by the Executive where further action can appropriately be delegated to a Portfolio Holder;**
 - Any other matter that the Portfolio Holder can decide under the Scheme of Delegation where there has been no objection from any Member of the relevant PDS Committee.**

All these categories of decision will be subject to the Portfolio Holder circulating his proposed decision to all Members in advance by email as a “minded to” decision; any Member may request that a matter be referred to the relevant PDS Committee before a decision is taken.

- 3. The Working Group reports that there are mixed views on the issue of Area Planning Committees and makes no recommendation.**
- 4. That either the Leader or 9 Members of one recognised political group, or 5 Members across two political groups, be permitted to initiate a debate on any matter of local importance before full Council, prior to an Executive decision being taken.**
- 5. That the Director of Resources and Finance Director be instructed to undertake work to review the policy framework and financial thresholds for Council decision making, so that any changes may be implemented after the Annual Meeting in 2013.**

- 6. That Council should be the appropriate authority to consider major planning applications on the recommendation of the Development Control Committee or at the request of twenty Members of the Council.**
- 7. The Council's e-petition facility be removed but the Petition Scheme otherwise continue un-amended.**
- 8. The scheme of public and Member questions be amended to allow supplementary questions on replies from members of the Council. The timing should remain at 30 minutes, subject to the Mayor's discretion to extend the time.**
- 9. The prohibition on recording of meetings by members of the public be removed, subject to suitable disclaimers and a right for the meeting to demand that recording be stopped.**
- 10. Video cameras should be provided in the Council Chamber to allow the provision of vision as well as sound for overflow rooms.**
- 11. Master recordings be made of full Council meetings.**
- 12. Further work should be undertaken by the New Technology Working Group to examine how Councillors can use new technology more effectively to achieve economies and efficiency as part of a wider assessment of Member support, examples being:
 - (12.1) Encouraging a move from Council-financed fixed line phones and broadband across to mobile phones and use of Councillors' own broadband;**
 - (12.2) Trialling hand held/tablet devices as an alternative to hard-copy deliveries and extending the use of team sites (similar to that used to support this review) to make background portfolio information available on an on-going basis to Councillors rather than providing this only in "for information" agenda reports; and**
 - (12.3) Enhanced presentation facilities to support public access to Council meetings, such as better hearing loops in Civic Centre rooms.****
- 13. Members elected before 2010 should be encouraged to switch away from Council provided landlines to mobile phones.**
- 14. Members should be allowed a monthly allowance for using their personal mobile phones rather than Council supplied equipment for Council business.**

- 15. Tablet computers should be provided to all Members from 2014 and paper delivery stopped.**
- 16. Tablet computers should be provided on request for those members prepared to forgo printed agenda papers.**
- 17. Teleconferencing, skype and similar new technology approaches are endorsed for use at informal meetings wherever practical for those Members who are unable to be present and investigations be made into the legal issues for their use for more formal meetings.**
- 18. All Freedom of Information questions and answers should be made available via the Council's website.**
- 19. Work be initiated to secure a review of Councillor numbers in time for the 2018 election.**

2. Background

2.1 At its meeting on 14th December 2011 the Executive decided to re-constitute the Constitution Improvement Working Group to carry out a short piece of work considering the issues for the Council's Constitution arising from the Localism Act 2011. Ten members of the Council were appointed to the Working Group as follows –

Councillor Nicholas Bennett JP, (Chairman)
Councillor Reg Adams, Liberal Democrat Group
Councillor Graham Arthur, Resources Portfolio Holder
Councillor Julian Benington, Conservative Group
Councillor Eric Bosshard, Chairman, Executive & Resources PDS Committee
Councillor Stephen Carr, Leader of the Council
Councillor Peter Dean, Chairman, Development Control Committee
Councillor Robert Evans, Conservative Group
Councillor Peter Fookes, Labour Group
Councillor Tony Owen, Chairman, General Purposes & Licensing Committee

2.2 Although the Working Group was set up primarily to consider the impact of the Localism Act in relation to issues such as the standards system and options for returning to a committee system, it also considered a number of related issues such as Members' IT, full Council meetings and executive decision making. The Working Group met on five occasions as follows –

- 8th February 2012
- 29th May 2012
- 30th July 2012
- 6th September 2012
- 27th September 2012

2.3 Recommendations on the standards system were reported to the Executive on 20th June 2012, Standards Committee on 19th June 2012 and then to full Council on 25th June 2012 in order that the new system could be approved to start as required on 1st July 2012. Council agreed (i) to endorse the adoption of the Model Code of Conduct produced by the Department for Communities and Local Government as adapted to retain the need to register all interests currently registered including maintaining a register of gifts and hospitality with the existing £25 threshold, (ii) to retain a Standards Committee (comprising the existing Councillor representatives), and (iii) agreed that requests for dispensation should be dealt with by the Urgency Committee.

2.4 The Council decision on 25th June 2012 was supported by means of an officer report based on the Working Group's deliberations. This current report picks up all the other issues considered by the Working Group since its re-establishment in February 2012.

3. Issues considered by the Working Group

(A) Options for Governance

3.1 The Localism Act 2011 set out four possible governance arrangements –

- Leader and Executive (as currently operating in Bromley)
- Executive Mayor and cabinet
- Committee System
- Other arrangements prescribed by the Secretary of State, including a hybrid system. (Any alternative arrangement would need to demonstrate that it would improve local governance and be of benefit if applied in other authorities.)

3.2 We worked to two criteria for selecting the most appropriate governance arrangements for Bromley –

- democratic oversight and involvement;
- efficient, effective, economic and corporate decisions which reach the right conclusions.

3.3 Arguments raised in support of a committee system included -

- committees led to better quality decisions and more challenge of officer recommendations;
- committees allowed all members to have a say;
- committees allowed members to consider matters in more detail;
- scrutiny could still happen under a committee system;
- the policy development role of PDS Committees has not been as effective as hoped;

3.4 Arguments advanced for keeping the existing leader and cabinet model included –

- greater member involvement in decisions;
- greater in-depth knowledge of leading members, especially portfolio holders, executive assistants and PDS chairmen, with more members working almost full-time as councillors;
- many committee decisions were, effectively, taken in group meetings;
- decision making is more member-led than under the committee system;
- pre-decision scrutiny works well and call-ins are rarely needed;
- the system allows for a clear decision-maker to be held responsible but also allows all members to be involved in a strong advisory role;
- the current system is efficient and does not lead to “rogue committees”

3.5 There were a variety of views in the Working Group, but most Members considered that the current system worked well and should be maintained.

There was some support for a committee system, but very little for a hybrid system as it was difficult to see how such a system could operate in accordance with the principles set out in 3.2.

Recommendation 1:

That the present Leader and Cabinet system of governance be retained.

(B) Executive Decision Making

3.6 The Working Group considered whether the current pre-decision scrutiny arrangements for individual portfolio holder decisions could be relaxed to allow the more routine decisions to be made without scrutiny at a Policy Development and Scrutiny (PDS) Committee meeting. These would be issues such as straightforward appointments, local schemes where there was no opposition from ward councillors and the like. Safeguards could include issuing a “minded to” report at least five working days before the decision was taken and allowing such decisions to be “called in” for scrutiny at a PDS Committee. Proposed decisions would have to be emailed to all Councillors, and any Member would be able to ask for a matter to go to the relevant PDS Committee.

3.7 The Working Group agreed to recommend that the system for Portfolio Holder decisions should be streamlined where the PDS Committee and the Portfolio Holder were in agreement.

3.8 The Working Group also noted that new rules on executive decision making came into effect on 10th September 2012. These removed the Forward Plan of Key Decisions in its current form but imposed a requirement for key decisions and decisions made in private by the Executive or a committee of the Executive to be publicised 28 days in advance (unless there were grounds of urgency.) The rules did not apply to individual Portfolio Holder decisions, but did appear to cover all executive decisions made by officers – this was potentially a massive increase in bureaucracy and clarification was being sought on this issue.

Recommendation 2:

That, where PDS Committees and Portfolio Holders are in agreement, Portfolio Holders may make decisions without formal pre-decision scrutiny in the following categories and circumstances -

- **Appointments made by the Portfolio Holder where there is only one nominee;**
- **Local schemes costing less than £35k which affect only one Ward, e.g.: minor highways schemes, where all Ward Councillors are in support of the proposal;**
- **Contract extensions where there are no performance issues with the contractor and the contract includes a provision to extend;**

- **Contract awards where there has been a gateway review and the award is proposed to be made to the most economically advantageous tenderer;**
- **Contract waivers where the Portfolio Holder is required to agree single tender action;**
- **Matters considered by the Executive where further action can appropriately be delegated to a Portfolio Holder;**
- **Any other matter that the Portfolio Holder can decide under the Scheme of Delegation where there has been no objection from any Member of the relevant PDS Committee.**

All these categories of decision will be subject to the Portfolio Holder circulating his proposed decision to all Members in advance by email as a “minded to” decision; any Member may request that a matter be referred to the relevant PDS Committee before a decision is taken.

(C) Area Committees

3.9 Different types of area committee were considered. Members did not support a large scale devolution to area committees as had been tried in Tower Hamlets, but they did consider that allowing some more local decision making at ward level on certain issues, such as local environmental schemes, and possibly local budgets, might be useful.

3.10 Area committees for planning were proposed, as these were common elsewhere and could allow the local differences, for example urban and rural, to be recognised. Some Members felt that there were advantages in terms of better local knowledge and making it easier for committee members to visit application sites as they would be local, rather than borough-wide.

3.11 However, most Members felt that area planning committees could lead to more subjective and inconsistent planning decisions, and could potentially lead to delays in determining applications. There was concern that Members should not determine applications in their own wards and that area committees would be more parochial and self-interested. However, it was also suggested that committees could still be local, but with members not being allowed to determine cases in their own wards.

**Recommendation 3:
The Working Group reports that there are mixed views on the issue of Area Planning Committees and makes no recommendation.**

(D) Enhancing the Role of Full Council Meetings

3.12 Most Members were in favour of enhancing the role of full Council meetings, although one member suggested that it was a mistake to try and make any meeting more interesting. Various suggestions were made, and the Working Group proposed a number of changes set out in recommendations 4 to 11.

3.13 The Working Group supported encouraging more themed debates at full Council with a duty for the Executive to respond to policy proposals. The referral by the Executive to full Council of the Biggin Hill application was cited as an example of a Council meeting which produced real debate and involvement by all Members of the Council. The Executive should also be able to refer major matters to full Council before taking important decisions.

Recommendation 4:

That either the Leader or 9 Members of one recognised political group, or 5 Members across two political groups, be permitted to initiate a debate on any matter of local importance before full Council, prior to an Executive decision being taken.

3.14 The Working Group supported a proposal that the policy framework and financial thresholds be reviewed. One possibility was a cap on the monetary value of decisions taken by the Executive at, possibly, £5m (although full Council currently had to decide on supplementary estimates above £1m, there was no cap on Executive decisions taken within existing budgets.) This needed to be considered in more detail so the Working Group proposes that officers report back in the spring of 2013 so that any changes can be implemented in time for the next Council year.

Recommendation 5:

That the Director of Resources and Finance Director be instructed to undertake work to review the policy framework and financial thresholds for Council decision making, so that any changes may be implemented after the Annual Meeting in 2013.

3.15 The Working Group agreed that major planning applications should be decided by full Council on the recommendation of Development Control Committee – it was suggested in addition that 20 Members could request an application to go to Council.

Recommendation 6:

That Council should be the appropriate authority to consider major planning applications on the recommendation of the Development Control Committee or at the request of twenty Members of the Council.

3.16 The Council had established a Petition Scheme as required by the Local Democracy, Economic Development and Construction Act 2009. Section 46 of the Localism Act removed the duty to have a petition scheme. An annual

report on the operation of the Petition Scheme had been considered by the General Purposes and Licensing Committee, which had referred a number of issues to this Working Group for consideration, including thresholds, timescales and requirements for receiving e-petitions. The Working Group considered that it was important to keep ward Members informed about petitions, but did not see any particular need to change the scheme except to withdraw the Council's own e-petition facility, which had only been used once in two years and was no longer a statutory requirement.

Recommendation 7:

The Council's e-petition facility be removed but the Petition Scheme otherwise continue un-amended.

3.17 The Working Group considered that allowing supplementary questions from Members on replies to public or other members' questions would be useful. It was recognised that this could cause time pressure on occasion, but it was considered that an extension of the time available could be allowed at the discretion of the chairman if necessary.

Recommendation 8:

The scheme of public and Member questions be amended to allow supplementary questions on replies from members of the Council. The timing should remain at 30 minutes, subject to the Mayor's discretion to extend the time.

3.18 The Council's standing orders did permit recording of meetings, but only with the specific consent of the meeting. Although some Members were happy to allow recordings to be made of meetings, other Members commented that there was a danger that debates would be less open, it was difficult to know who was speaking from a recording, and that the public were free to attend most meetings if they were interested. It was suggested that the Resources Portfolio Holder should investigate whether better technology could be provided in the committee rooms to allow transmission of pictures as well as sound to overflow rooms.

3.19 Under the new Executive regulations local authorities were obliged to provide reasonable facilities for the public, as well as journalists, to report on meetings, and a Government press release suggested that this would assist new social media reporting including blogging, tweeting and hyper-local news forums. However, there was an apparent contradiction in that there was also no requirement to allow the taking of pictures or the recording of meetings.

3.20 The reasons for Members not wanting to allow recordings were concerned with fears about inhibiting free and open debate and particular statements being taken out of context or misused against the Council or particular Councillors. Members accepted that it was now harder to prevent discreet recording by members of the public and this was an issue now being addressed in the courts system. Most Members of the Working Group were prepared to allow recordings, including video, to be made by the public, provided that the meeting could require them to be stopped if necessary and

that there were notices to make it clear that recordings should not be misused.

3.21 Members discussed whether the Council should be providing video recordings of meetings. The current pa/microphone system could be extended to allow video recording and internet streaming, and camera technology had advanced with fixed point cameras able to follow individual speakers. The exact costs had not been established, but most Members felt that the Council could not justify expenditure on this, except for conveying pictures to accompany sound to overflow rooms when the Council Chamber was full.

Recommendation 9:

The prohibition on recording of meetings by members of the public be removed, subject to suitable disclaimers and a right for the meeting to demand that recording be stopped.

Recommendation 10:

Video cameras should be provided in the Council Chamber to allow the provision of vision as well as sound for overflow rooms.

Recommendation 11:

Master recordings be made of full Council meetings.

(E) Councillors' IT

3.22 Wi-fi had been installed for all the committee rooms, allowing tablet devices to be used at meetings, and was now in use. A pilot was already being carried out with certain Members using i-pads for meetings with a view to providing all members with tablets in 2014. This would enable provision of paper agendas to cease. The Working Group felt that tablets should be provided now to those Members who were prepared to forgo paper agendas. It was also intended that all Members should move towards having a Council mobile phone rather than a fixed line for Council business. However, some Councillors experienced problems with mobile reception in their areas.

3.23 Other uses of technology were discussed. Members were interested in the use of teleconferencing and skype for meetings (it was suggested that skype worked well for 1:1 meetings, but pictures could prove a distraction in larger meetings.) These facilities were already available. It was noted that wi-fi was good for business, and there were opportunities for developing income from wireless equipment being installed on street lights and other street furniture. It was also suggested that pictures of application sites could be projected during planning meetings.

Recommendation 12:

Further work should be undertaken by the New Technology Working Group to examine how Councillors can use new technology more effectively to achieve economies and efficiency

as part of a wider assessment of Member support, examples being:

(12.1) Encouraging a move from Council-financed fixed line phones and broadband across to mobile phones and use of Councillors' own broadband;

(12.2) Trialling hand held/tablet devices as an alternative to hard-copy deliveries and extending the use of team sites (similar to that used to support this review) to make background portfolio information available on an on-going basis to Councillors rather than providing this only in "for information" agenda reports; and

(12.3) Enhanced presentation facilities to support public access to Council meetings, such as better hearing loops in Civic Centre rooms.

Recommendation 13:

Members elected before 2010 should be encouraged to switch away from Council provided landlines to mobile phones.

Recommendation 14:

Members should be allowed a monthly allowance for using their personal mobile phones rather than Council supplied equipment for Council business.

Recommendation 15:

Tablet computers should be provided to all Members from 2014 and paper delivery stopped.

Recommendation 16:

Tablet computers should be provided on request for those Members prepared to forgo printed agenda papers.

Recommendation 17:

Teleconferencing, skype and similar new technology approaches are endorsed for use at informal meetings wherever practical for those Members who are unable to be present and investigations be made into the legal issues for their use for more formal meetings.

(F) Freedom of Information Requests

3.24 The Working Group discussed the increasing numbers of Freedom of Information (Fol) requests being received. An e-form had now been introduced to channel requests to the right departments and officers were working on frequently asked questions (FAQ's.) The Council could only charge for providing answers when it would take 18 hours or more to provide an answer – this was up to about £750 in staff time and therefore opportunity cost. Members suggested publishing all answers so that people could be directed to answers that had already been published

Recommendation 18:

All Freedom of Information questions and answers should be made available via the Council's website.

(G) Councillor Numbers

3.25 The Working Group considered the process for reducing Councillor numbers through a review by the Boundary Commission for England. Any changes would have to be made at election time, and it was accepted that it was now too late to be seeking changes for 2014. Members felt that it was worth carrying out further work with a view to securing changes for 2018.

Recommendation 19:

Work be initiated to secure a review of Councillor numbers in time for the 2018 election.