



## DEMOCRATIC AND COMMITTEE ADMINISTRATION PROGRAMME 2023

### MINUTE-WRITING - PRINCIPLES AND PROBLEMS

#### SUMMARISING THE DISCUSSION

1. It's seldom necessary to reproduce, however briefly, what individual Members have said but helpful as a rule to pick up the main threads of the discussion that led to the conclusion. (This is an acquired skill.) Nor is it usual to record in the preamble the procedural steps that were followed.
2. When we move into the debate, the objective is to capture the sense of the meeting as well as the decision. That's your job.
3. A good chair will help with this by holding the thread of the discussion as it progresses and summing it up at intervals, and may even decide to draw matters to a conclusion by inviting a motion or occasionally by putting one himself; he/she may then go on to signpost what will happen next. Both participants - the DSO and the chair have a part to play; in that sense each is reliant on the other.
4. Any references to councillors by name should be avoided, as far as possible, except when they declare interests, move motions and amendments, (and may be not even then) or ask for their vote or abstention to be recorded. Otherwise, the following form would always be preferable to directly attributing comments:

"A Member raised concerns about....." An even better form would be:

"The following points were raised in discussion:

Then list in bullet point form:

- It was noted that.....
- Any development of the site would.....
- Additional traffic generated.....
- The affect on Town Centre shopping.....
- The views of local residents.....
- Another community centre would not adequately .....

5. There are variations on this theme. Where there is broad agreement on the points raised the thread of discussion can be summarised like this:

The Committee took account of the following points:

Then list -

(a), (b), (c) etc.

6. In summary, a preamble may be useful, and in some cases even essential, where all or any of the following points arise during a meeting:
  - a) Where conflicting views emerge and/or where a vote is taken. In these circumstances it would be helpful to indicate the nature of the differences that emerged during the debate, or the range of views. This would help to explain why the decision went to a vote, and why a particular view prevailed.
  - b) Where significant issues and concerns are raised during the debate. This would help to explain that the committee addressed the relevant issues before reaching a consensus.
  - c) Where officer advice is given at the meeting and has a material effect on the decision taken, or where it is clearly important that Members take it into account in their decision making (especially where the advice has been disregarded).
  - d) Where additional or updated information is presented or tabled at the meeting.
  - e) Where corrections are made to reports at the meeting.
  - f) Where the reasons for the decision differ from those set out in the officer's report.
  - g) Where a different recommendation is adopted.

#### **RECORDING PUBLIC SPEAKING**

7. We may need to record the contributions of ward Members and members of the public exercising a right to speak, in this form:

Mr Martin, representing the Capel Action Group, and Mrs Hughes, Chairman of the Parish Council, both spoke against the application.

Mr Ralph Smart, Jennings and Pine Ltd, spoke as the agent for the applicant.

Councillor Denny, ward member for Capel, spoke on behalf of local residents followed by Councillor Irving, ward member for Broom, who spoke in support of the application.

An alternative form with more detail would be:

The Committee received representations from two objectors to the application.

Mr. Martin raised concerns as follows:

- His home was very near to the site and would be dwarfed by the retail development which was much too large for this rural site.
- The proposed development would generate large volumes of additional traffic and improvements proposed to the road network were completely inadequate.

The local Member for Capel ward, Councillor Denny, reported that Market Street residents were opposed to the application on the grounds that the development was out of keeping with the neighbouring residential area and represented an over-development of the site.

The local Member for the Broom ward, Councillor Irving, spoke in support of the application, a much needed new out-of-town retail outlet in an area with many elderly residents.

## **REASONS FOR DECISIONS.**

8. As a general principle a local authority should always be prepared to justify its action by giving a reason unless there are overriding considerations which suggest that it should not do so. In some cases the authority is bound to provide reasons for its decisions, for example where general considerations of procedural fairness require it, such as decisions on planning and licensing applications and school admission and exclusion appeals. Remember also the importance of reasons in cases where a planning application is rejected against officer advice.
9. 'Knowles on Local Authority Meetings' advises that in the absence of a recorded decision the courts may take the view that the authority had no reason for the decision taken eg. R v Penwith District Council 1987 (a refusal of a street trading consent). In this case the court quashed a council's decision on the ground that as no reason had been given it had to be assumed that it had no good reason for arriving at its conclusion.
10. Reasons for decisions should always be included in cases involving individuals such as tenants, applicants for licensing and planning permission, and any other decisions where people's rights are affected; see R v Lambeth London Borough Council ex parte Walters (1993) where a decision on a housing tenancy allocation was held to be unlawful because no reasons were given. The chair has a key part to play in making sure that the reasons for a committee's decisions are clearly stated, and clearly understood by Members

11. The inclusion of reasons is important to:

- show procedural fairness and avoid potential legal challenge;
- give substance to the decision in anticipation of any subsequent appeal;
- demonstrate that the issues have been properly addressed;
- explain the impact on the applicant; and
- promote transparency.

12. Reasons put forward by individual Members during the debate should not form part of the decision. The formal minute should reflect the collective reasoning of the committee eg.

‘The Committee took the view that the application should be approved for the following reasons .....

‘**RESOLVED that .....**’

#### **PLANNING COMMITTEES – OVERTURNING OFFICER RECOMMENDATIONS**

13. The planning committee has to reach its own decisions. Officers give advice and make recommendations. Planning officers’ views and recommendations may sometimes be at odds with the views or decisions of the planning committee or its members. A planning committee can accept or place a different interpretation on, or give different weight to, the various arguments and material planning considerations.

The High Court recently drew attention to advice for councillors provided by Lawyers in Local Government in R (CPRE Kent) v Dover District Council

‘Do make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.’

14. Any member who does not agree with the officer recommendation to approve an application can propose reasons for refusal, which need to be seconded by another member and then voted on. Any decision by the planning committee must be based on proper planning reasons.

15. Officers should summarise the main reasons for refusal referred to by members during the debate and include advice on what would be reasonable in planning terms, and what would not be reasonable reasons for refusal.

16. A planning committee may adjourn for a few minutes to discuss the reasons and then formally agree them once the meeting has reconvened. Where there is concern about the validity of the reasons, the committee may choose to defer consideration

of the application to another meeting so that draft reasons can be prepared for consideration. It is not acceptable for the committee to tell the planning officer to “go away and sort out the planning reasons.”

17. The reasons for any decisions which are made contrary to the planning officer’s recommendation must be formally recorded in the minutes.

## **RECORDING EXECUTIVE DECISIONS**

18. There are specific requirements for the records of executive decisions under the Local Government Act 2000 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
19. Previously, where an executive decision was taken by cabinet or a cabinet member, a written statement of that decision had to be produced as soon as reasonably practicable, but where an individual officer took a decision, he or she only had to produce a written statement after taking a key decision. The 2012 regulations now require an officer to prepare and publish a written statement of every executive decision which he or she takes, which must include a note of any cabinet member whom he/she has consulted in taking that decision.
20. For all decisions made by cabinet meetings, the executive leader, or a cabinet member, and officers who consult any cabinet member, the record of the decision must disclose any “conflict of interest” declared by any cabinet member and a note of any dispensation granted by the authority’s head of paid service.
21. A record of the decision should be made as soon as reasonably practicable including the date it was made and:
  - a record of the reasons for the decision.
  - details of any alternative options considered and rejected.
  - a record of any conflict of interest in relation to the matter decided which is declared by any member of the decision-making body which made the decision (or the officer or a cabinet member consulted about the decision).

## **OVERVIEW AND SCRUTINY COMMITTEES**

22. The proceedings of a meeting performing a statutory scrutiny function should be more fully recorded than is often the case in many local authorities. Although no decisions are taken, the minutes of an O&S committee meeting can be equally as important as minutes which record a decision, especially where a committee is questioning and holding to account an external body. Where a committee is conducting an inquiry, its minutes should record the questions put by Members and the answers given, as well as the nature of the discussion and the conclusions reached.
23. The report by Robert Francis QC on the public inquiry into the Mid Staffordshire NHS Trust in 2013 has something to say on this point:

“While a Hansard transcript is not required, it is unfair to the councillors and obstructive to public involvement and engagement for there to be no record of the contributions made by committee members whether by way of observations or questions, and of the responses given. The essence of public engagement is that their views are captured to inform the decision-making processes within the service. This requires the recording not only of an outcome but also of the range of views expressed.”

## RESOLUTIONS AND RECOMMENDATIONS

24. Resolutions and recommendations should be absolutely clear and totally unambiguous. That is not however to say that a minute cannot refer to other supporting material. What matters is that the decision is understandable in its own right, without reference to other documents.
25. Where a committee is taking decisions under powers delegated by council, it will usually pass resolutions in the following form:

**“RESOLVED: That the Council enters into an agreement with.....”**

Where a committee has no delegated powers in relation to a particular matter, a different form would be more appropriate:

**“RESOLVED TO RECOMMEND: That the.....”**

Or

**“RECOMMENDED: That.....”**

(Note: Either of these forms could also apply to task groups reporting up to a committee).

Or if the decision-maker is the council (or cabinet) this could be clearly shown:

**“RESOLVED: That the Council (or Cabinet) be recommended.....”**

It will be a matter of style for different councils, as will most of these points, but voting should be recorded as follows:

**“RECOMMENDED: (by 12 votes to 9) That.....”.**

Where the Chair uses his/her casting vote, that may be recorded like this:

**“RESOLVED: (on the casting vote of the Chair) That.....”**

Some councils will not routinely record voting figures or the use of the Chair’s second or casting vote. However, if immediately after a vote is taken, a Member asks for

his/her opposition or abstention to be recorded in the minutes this should be done as follows:

“Councillor James asked for his vote for/against the decision (or abstention) to be recorded in the minutes.”

Peter Edwards  
31 January 2023