

CLERK'S REPORT TO STAPELEY & DISTRICT PARISH COUNCIL 1 MARCH 2012

PUBLIC QUESTION TIME [Review of Standing Order No. 1]

1 Introduction

The Parish Council's Standing Orders were reviewed and adopted in September 2011. At the previous meeting (2 February 2012), the Parish Council agreed to a review of Standing Order No.1 which covers public question time. The Member who raised the issue considers that the Standing Order could be amended to make this period an "Open Forum" which would allow a free debate involving all parties, similar to the way in which Public Question Time developed at the last meeting.

This report explains the current situation within the legal framework and outlines the implications of an Open Forum option.

Guidance from the Cheshire Association of Local Councils has been provided and reference has been made to the NALC Guidance Note on Community Engagement.

2 Recommendation

- 2.1 The Parish Council is invited to consider if an amendment should be made to Standing Order No. 1 to allow an Open Forum session (to replace Public Question Time) to be held prior to the start of each Parish Council meeting; or
- 2.2 In the event of rejection of the inclusion of an Open Forum, the Parish Council might wish to consider amending the Standing Order to allow members of the public to **address** the Parish Council (ie make a statement) in addition to having the facility to pose a question.

3 Public Speaking Time

Standing Order No.1 covering public question time at meetings of the Parish Council is attached at Appendix 1. . . .

4 The Legal Framework

S.1 of the Public Bodies (Admission to Meetings) Act 1960 provides that meetings must be open to the public, and Schedule 12 of the Local Government Act 1972 gives all local authorities the power to make Standing Orders to regulate the business of the parish council.

Members of the public have a legal right to attend meetings of a Parish Council and its committees, except where they are excluded (by a resolution of the meeting) for specific items which need to be discussed in confidence; for example, staffing matters, contracts, business dealings in respect of other than the Parish Council. They have no legal right to speak at meetings of the Council or its committees. However as part of its community engagement, Parish Councils can set aside time for public question time at meetings.

Note 47 (page 9) of Standing Orders states -

"The public cannot, of course, take part in the proceedings of the Council, but an increasing number of Councils have created and sustained public interest in their work by arranging for a short period in meetings (say 20 to 30 minutes) when members of the public are permitted to put questions to the Council or to make observations. Such periods can be either during the meeting (by adjournment) or at its end."

This view is supported in the Eighth Edition of Local Council Administration (Charles Arnold-Baker) which confirms that it is good practice for a period to be set aside when the public can ask questions or make statements, as long as it is a defined period and it is clearly understood that the public must not take part at any other time.

All the guidance refers to “questions” or “statements” from members of the public but there is no provision for a public debate to be held at Parish Council meetings. The Cheshire Association of Local Councils has confirmed this view.

5 Public Question Time

Public question time should be used for issues where a decision will, or could, be made by the Parish Council, or for comments on items already listed on the agenda. It is not a good use of the Parish Council's time to listen to members of the public raising issues about hedges, street lights, pot-holes and so forth during public question time. Such matters should be reported direct to the Borough Council either by phone or using its on-line system of reporting faults. Alternatively, contact can be made with the Clerk who can take action, or report matters as appropriate.

A specific time should be set aside for public question time and standing orders should state that the time will not exceed (?) minutes, with individual contributions being limited to (3) minutes. The 3 minute limit is in line with public speaking rights at Committees of the Borough Council. If there is a possibility that a large number of people will wish to speak, the Chairman should encourage people not to repeat comments made by earlier speakers. Three minutes may appear to be an inadequate time for a member of the public to make their representations; however, if they prepare adequately before a meeting, the whole of this yellow highlighted text can be read in 3 minutes.

It is up to the Parish Council when to allow public question time. A good place is near the start of the meeting immediately after Declaration of Interests and approval of the Minutes, so that everyone is aware if a Member has a personal and prejudicial interest in any item of business on the agenda. This is important because of the provisions of Paragraph 12(2) of the Code of Conduct which the Parish Council has adopted. This permits Parish Councillors with a personal and prejudicial interest in an agenda item to speak during public question time, for the sole purpose of giving evidence and making representations, but not to enter into debate to discuss the merits of the item. The Parish Councillor must then withdraw from the meeting room when the item is considered on the agenda.

There was a suggestion at the previous meeting that members of the public could be allowed to participate throughout the meeting. Not only is this not permitted, but is undesirable as this runs the risk of confusing the roles of Parish Councillors who participate in the meeting and vote, and members of the public who observe it. The Parish Council is a corporate body. Parish Councillors are elected (or co-opted) to make decisions on behalf of the parish. It is their task to bring local issues to the attention of the Parish Council to help it make decisions. Their mandate is to represent what they consider to be the best interests of the parish, based on their own local knowledge of the area. This does not, necessarily, mean having to consult each elector to find out their views. On occasions, the views of Parish Councillors will be in conflict with the views of some residents.

Members need to avoid entering into a debate with members of the public, whether during public question time or if the Parish Council decides to adopt an open forum (see paragraph 6 below). They (Parish Councillors) should reserve their comments/observations until the matter is discussed formally during the meeting. At the public question time stage, Parish Councillors should be *listening* to members of the public so that they may take those comments into account, if they wish, later in the meeting. If, for example, a member of the public were to ask “*What does the Parish Council think about X?*” If this is an item on the agenda, it will be debated in due course later in the meeting. If it is not an item on the agenda, it should be ruled inappropriate because the questioner is seeking to establish a Parish Council perspective on a matter which is not on the agenda, public notice has not been given, and, therefore, there is no “corporate” view.

Neither Parish Councillors nor the Clerk should feel under pressure to respond immediately to comments made during public question time other than those which relate to items on the agenda. A comment can be referred to the Clerk to write to the speaker, or could form the basis of an agenda item at a future meeting.

Cheshire East Borough Councillors have no special rights at Parish Council meetings. However, as a courtesy and in the interests of partnership working, there is a standing item on all agendas for Borough Councillors to report on current issues or matters of interest. They are also able to respond to questions from Members throughout the meeting.

Members of the public should not heckle or otherwise disrupt the meeting and should respect the rulings of the Chairman. The Chairman of any meeting has an inherent right to exclude a disorderly person (and this is enshrined in the Standing Orders). Disorderly members of the public cannot be excluded from future meetings, nor can they be required to apologise before attending future meetings.

6 Open Forum Option

If the Parish Council wishes to hold a more open public question time at each meeting, there will need to be a defined period [possibly 20 minutes] entitled “Open Forum” and this could be held prior to the start of the Parish Council meeting. This would avoid encroaching on the work of the Parish Council.

An item could be included at the front of the agenda (before the formal business) –

“Comments and questions may be put to the Council by the public during this period. Matters which, in the Chairman’s view require debate and/or a decision will be referred to the next Committee/Council meeting, as appropriate. The Public Forum is restricted to (?) minutes unless the Chairman allows otherwise.”

A Public Question Time slot (as an agenda item) could be retained in the Standing Orders (for a 10 minute period only) at the end of the meeting, but should be tightly controlled and not used as an opportunity for earlier speakers to have another “bite of the cherry”.

Implications

1. An Open Forum would address the request made by some Members for greater involvement by the public during public question time in Parish Council meetings without impinging on the Parish Council’s formal business.
2. Notwithstanding the above (at 1) a Parish Council meeting is not an appropriate time to hold any form of public debate because –
 - (i) public notice announces only that a Parish Council meeting is to be held. Therefore, persons with an interest in a subject raised ***and debated*** in Open Forum will feel excluded/unrepresented if a single-issue pressure group is allowed to have a discussion with councillors, unchallenged by their opposition; and
 - (ii) the public is only admitted to Parish Council meetings so that they can observe the Council in action and witness the decision-making process; the public has no active role to play on these occasions and the Council is at risk of accusations of misconduct if it gives the impression to its community that Open Forum is anything more than the Council’s “listening ear”.
3. The Council cannot take *unexpected* decisions, ie. make decisions on matters about which they have not had previous notice. This limits Parish Councillors’ immediate responses to any matter raised in Open Forum to -
 - (i) a straightforward, simple answer which is usually a matter of undisputed fact; for example,
Question: “How much does a dog-waste bin cost?”
Answer: “Between £150 and £200.” If, after receiving the answer, the questioner went on to ask a supplementary question; for example, “surely this Council can afford to install another two because we need them?” the Chairman should promptly call the discussion to a halt and inform the questioner that his/her request will be considered at the next Parish Council meeting, if appropriate; or, the Clerk can be instructed to make any necessary enquiries and write to the questioner.

This action will have three immediate consequences.

- Councillors do not become embroiled in an impromptu debate which is likely to lead nowhere.
- Councillors are not tempted to make a decision which might be *ultra vires*;
and
- More people will have the opportunity to speak because the Chairman has dealt with questions rapidly by referring them to the appropriate forum.

4. Despite publicity, attendance by members of the public at Parish Council meetings is rare, even at the annual meetings. Members will need to take this into account if opting for an Open Forum solution. Parish Council meetings are allowed to start late, but cannot start early. As this would take place before the Parish Council meeting commenced, even if there were no members of the public in attendance, the Parish Council would not be able to start its meeting until the appointed time. This could, potentially, result in a wasted 20 minutes at the start of every meeting.

7 Minor Amendment to Public Question Time

At present, the Standing Order allows for questions only. If so minded, the Parish Council could amend Standing Order 1 (c) to add the words “or make a statement” after “.....any local resident may submit a question.....”

However, if this amendment were adopted, it would still not permit a debate “across the chamber”.

8 Minuting of Public Question Time

The minuting of public question time, at present, is only to the extent that members of the public were present and addressed the meeting.

Minutes are intended to record **decisions** of the Parish Council. They are legal documents which can be presented in court. Stenography is not used to record Parish Council meetings and whilst some Members may consider it desirable to try to note what members of the public say, the principal disadvantage is the potential for misinterpretation which can result in lengthy corrections to the minutes at the next meeting where there might be disagreement about what is recorded.

At a recent Cheshire Quality Council Accreditation Panel, this matter was discussed, and best practice seems to indicate that the Open Forum should be noted within the body of the Minutes and a summary of the subject[s] raised by the public and the Council’s response noted; for example, “*A member of the public enquired into the timescale for completion of the community hall. The Clerk responded that the matter was still being dealt with by the Parish Council’s Legal Advisers.*”

9 Engagement with the Local Community

The Cheshire Association of Local Councils has commented that the Parish Council’s website is a good example of a Parish Council engaging with its community, and has said that the website is “interesting and informative and provides a means for local residents to make contact direct with parish councillors”.

Public Meetings

If the Parish Council is minded to enhance engagement with the local community, it might wish to consider organising quarterly public debates, to be held at Pear Tree School. There could be a specific topic for each debate, or it could be operated as an open forum. The timing of the debates could be linked to the publication of the newsletter and either be held in advance of publication, to inform the contents of the newsletter, or following distribution, to gain feedback.

Parish Councillors’ Surgeries:

Dependent on the outcome of the above, the Parish Council might wish to consider the re-introduction of the “Parish Councillors’ Surgeries” as a means of engaging with the local community. This has been included as a separate item on the agenda.

APPENDIX 1

Current Standing Order 1 b-h

- b Meetings shall be open to the public unless their presence is prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons. The public's exclusion from part or all of a meeting shall be by a resolution which shall give reasons for the public's exclusion.**
- c Subject to standing order 1(b) above, any local resident may submit a question, either in writing prior to the meeting, addressed to the Parish Clerk, or orally at the meeting. The Parish Council shall allow a 10-minute period for questions at the early part of the meeting subject to standing order 1(b) above, following notification of apologies, declarations of interest and approval of minutes.

The following shall apply –

- The question should relate to the duties of the Parish Council. In the case of written questions, the Clerk will advise the Chairman if the question is appropriate, potentially defamatory, or abusive language has been used. In these circumstances, a decision may be taken to withhold the question from the meeting.
- There shall be no discussion on any matter raised by such questions. If possible, a response shall be given at the meeting; otherwise a written response will be provided to the questioner. Any parish councillor may move a motion that the subject matter be placed on the agenda of the next ordinary meeting. On being seconded, the matter shall be put to the vote.

A further public speaking time of 10 minutes shall be allowed prior to close of the meeting. The provisions above shall apply.

- d Subject to standing order 1(c) above, each member of the public is entitled to speak once only in respect of business itemised on the agenda and shall not speak for more than 10 minutes, dependent on the number of speakers in attendance. The Chairman shall have the discretion to extend the public speaking time, if considered appropriate.
- e. In accordance with standing order 1(d) above, a question asked by a member of the public during a public question time session at a meeting shall not require a response or debate.
- f. The Chairman may direct that a response to a question posed by a member of the public be referred to a Councillor for an oral response (if appropriate) or to the Clerk for a written or oral response.
- g. A record of a public question time session at a meeting shall be included in the minutes of that meeting to the extent only that members of the public were in attendance and addressed the Council.
- h. Any person speaking at a meeting shall address their comments to the Chairman.

APPENDIX 2

Revised Standing Order 1 [dependent on the option adopted]

(Note: this will displace the current sequencing and paragraphs 1 onwards will be re-ordered.)

- b Meetings shall be open to the public unless their presence is prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons. The public's exclusion from part or all of a meeting shall be by a resolution which shall give reasons for the public's exclusion.**
- c Subject to standing order 1(b) above, any local resident may submit a question or give notice of their intention to make a statement, either in writing prior to the meeting, addressed to the Parish Clerk, or orally at the meeting. The Parish Council shall allow a [period of time] minute period for questions/statements prior to commencement of the formal meeting.
- d The question/statement should relate to any item of business on the agenda for the instant meeting, or any matter relating to the work of the Parish Council. In the case of written questions, the Clerk will advise the Chairman if the question is appropriate, potentially defamatory, or abusive language has been used. In these circumstances, a decision may be taken (by the Clerk in consultation with the Chairman) to withhold the question from the meeting.
- e The matters raised will be open to discussion, if the Chairman considers it appropriate. If possible, a response to questions shall be given at the meeting; otherwise a written response will be provided to the questioner. Any parish councillor may move a motion that the subject matter be placed on the agenda of the next ordinary meeting. On being seconded, the matter shall be put to the vote.
- f Subject to standing order 1(c) above, each member of the public is entitled to speak once only in respect of business itemised on the agenda and shall not speak for more than **3** minutes, dependent on the number of speakers in attendance. The Chairman shall have the discretion to extend the public speaking time, if considered appropriate.
- g A person shall raise his/her hand when requesting to speak and stand when speaking (except when a person has a disability or is likely to suffer discomfort).
- h The Chairman may direct that a response to a question posed by a member of the public be referred to a Parish Councillor for an oral response (if appropriate) or to the Clerk for a written or oral response.
- i Where decisions are to be made later in the instant meeting in respect of items listed on the agenda, there should be no decisions based solely on any comments and representations made in the public question time session. However, once the session is over and Parish Councillors consider the formal business, they will be able to take into account comments and representations previously made by the public, along with any other (relevant) information and issues raised during their own discussion and debate.
- j. Any person speaking at a meeting shall address their comments to the Chairman.
- k Parish Councillors are required to observe the Code of Conduct throughout such discussions and if they have a personal and prejudicial interest in any matter on the agenda, and such matter is raised during this period, the Member must act in accordance with Paragraph 12(2) of the Code of Conduct and can only make representations/give evidence and then **MUST** withdraw from the room before the matter is considered formally by the Parish Council.

APPENDIX 3
Public Speaking Protocol – for publication on the website
and display in notice-boards
(dependent on Parish Council's decision)

This Parish Council meets and makes its decisions in public. A Parish Council meeting is not a public meeting. It is a meeting held in public and there is no requirement in law to provide an Open Forum, but this Council is pleased to offer this opportunity to local residents to demonstrate that it is committed to community engagement. The Open Forum is held prior to the start of the formal meeting.

Please respect the fact that this is a meeting to conduct Parish Council business and interruptions during the meeting are not permitted. If the business is disrupted in any way, the person(s) causing the disruption may be asked to leave.

- Public question time will be for a period of (?) minutes. Any member of the public wishing to speak must notify the Clerk prior to the start of the meeting. As a courtesy, it would be appreciated if 24 hours' could be provided.
- The agenda will stipulate that public question time will take place from 7.30 pm – 7.50 pm. This can be extended at the discretion of the Chairman.
- Public question time is permitted in respect of items on the agenda or any other business of the Parish Council.
- A maximum of (?) minutes per speaker is permitted.
- The matter may be addressed immediately or carried forward without discussion.
- Supplementary questions or comments are only permitted at the sole discretion of the Chairman.
- No question may be repeated within a 6-month period.
- If more than one speaker wishes to speak on the same agenda item, the Chairman shall have discretion to disregard any questions or comments if they are a repetition of those of a previous speaker.