

## Constitution Review

### Proposals for Changes to the Constitution

#### Responsibility for Updating the Constitution

1. Recommend that the overlap of responsibilities between the Audit and Governance Committee and the Standards and General Purposes Committee in relation to oversight and changes to the Constitution are separated and clarified.

As regards constitutional elements suggested that standards and ethical matters (not including the Officer Code of Conduct or other personnel matters) are reserved to Standards and General Purposes Committee and all other constitutional elements reserved to Audit and Governance Committee with all changes to the Constitution to be recommended via the Standards and General Purposes Committee.

Reasons: to clarify and set out the roles and responsibilities of each Committee and clear path for changes to avoid duplication or overlap. There is also concern that the current definitions and responsibilities have a potential to create a gap in responsibilities in this regard. This will result in constitution changes other than standards and ethics taking a longer route via both Audit and Governance and Standards and General Purposes Committees but will ensure that one committee has full oversight of all changes.

#### Joint Arrangements

2. Recommend the extent of joint arrangements detailed within the Constitution is reviewed and delegated authority is given to the Monitoring Officer to update relevant parts of the Constitution to appropriately reflect the position. This will include the Channel Panel

Reasons: full details were not originally included in the Constitution to allow flexibility especially where re-organisation issues were still to be finalised. Including more joint working arrangements, such as advisory groups, panels and partnerships assists transparency and understanding of the structure of the Council as well as decision making and accountability.

This is intended to be an update to reflect arrangements already in place and will not create any new joint arrangements.

## **Community Boards**

3. Recommend further details of the Terms of Reference, including references to awards of grants, are included in the Constitution via a delegation to the Monitoring Officer to update with the current arrangements.

Reasons: details of the Community Boards were not included to allow development of the Boards with the community. The Boards have been operating for some time and whilst they are meant to be flexible and informal it is now considered appropriate to include details in the Constitution to aid transparency and create consistency by utilising the best current practices as a base.

As the details need to be relevant and applicable to all Boards taking into account local variations, it is not proposed that the details are to be prescriptive. They will however reflect the current position and operation of the Boards and will not introduce any new powers.

## **Council and Committee Procedure Rules**

### **Motions**

4. Recommend the insertion of clauses relating to rescission of previous decisions and motions previously rejected.

#### ***Motion to rescind a previous decision***

*1. No motion or amendment to a motion to reverse a decision made at a meeting of the Council within the preceding six months shall be moved unless the notice of motion is signed by at least [15] councillors (including the proposer).*

#### ***Motion similar to one previously rejected***

*2. No motion or amendment to a motion to the same effect as one rejected by the Council within the preceding six months shall be moved unless the notice of motion is signed by at least [15] councillors (including the proposer). Once the Council has determined the extant motion or amendment, no one may propose a similar motion or amendment within a further period of [six] months.*

*3. The requirements in Rules 1 and 2 above shall not apply where the motion in question arises from the recommendation of the Cabinet or a committee.*

Reasons: while the Monitoring Officer, in consultation with the Chairman, can refuse to accept motions which are illegal, improper, vexatious or out of order having specific clause to cover this, together with a threshold for support will allow greater clarity and fairness.

5. Recommend the decision on whether to refuse motions which are illegal, improper, vexatious or out of order is changed from “*the Monitoring Officer in consultation with the Chairman*” to “*the Chairman in consultation with the Monitoring Officer*”.

Reasons: similar decisions, eg on content of questions, rests with the Chairman and aligns with the overall role of the Chairman. Monitoring Officer will still have the legal oversight due to notice requirements and consultation.

### **Deadline for questions**

6. Recommend change to the notice period for member questions to Cabinet from midday 5 clear working days before the meeting to midday [3] clear working days before the meeting. Retain exception for urgent questions with the consent of the Chairman/Leader.

Reasons: It was expected that agendas would be published earlier than the required 5 clear working days before the meeting. However where the minimum publication time is observed, ie up to midnight on the 6<sup>th</sup> working day before the meeting, members could miss the deadline whilst waiting for the agenda.

### **Planning Committee Procedures**

7. Para 3.13(f) Consider changing the decision-maker on the order that planning applications will be considered to the Service Director in consultation with the Chairman

Reason: There may be circumstances where applications need to be considered by the same committee and that the order in which they are considered by committee is important due to inter-dependencies. Whilst this is likely to only occur in a minority of cases, the proposed change allows the service to manage the agenda in consultation with the Chairman.

### **Planning Speaking Arrangements**

8. Para. 3.19 – amend the order in which Planning Applications are to be decided to include points of clarification from all speakers after the speakers have spoken as well as after the end of the debate in accordance with the current public speaking arrangements. To include clarification on the application itself.

Reason: The proposed change is to clarify current public speaking arrangements.

9. Para. 3.20 states that: *“The following will be invited to speak at the first Planning Committee meeting at which a matter is considered: a. Members of the public who have previously made written representations objecting to or in support of the application; b. Town or Parish Councils who have been consulted on the application and where they have made a written representation; c. Members of the Council; and d. The applicant or agent.*

We currently notify all ward members and any members who have called the application in to committee, however the constitution allows any member to speak at committee. Ideally we therefore need a requirement for Members to register to speak in the same way other speakers do. It is therefore recommended that a line is added to the following effect *‘all those wishing to speak at Planning Committee will need to register to do so’*. However also see proposal at 10 below.

Reason: The proposed change is to clarify current arrangements and assist with the co-ordination of the Planning Committees.

10. Consider giving an automatic right to speak to the member(s) calling in the application **without** the need to register (ie an exception to the suggestion at 9 above).

Reason: such Members will be expected to speak anyway and will have called in for specific reasons, having this as an automatic right will lessen the administration and ensure those Members cannot lose their rights by oversight.

11. Recommend further clarity is provided to ensure that only the person who has spoken, even if it is on behalf of another person, is able to answer points of clarification during the committee meeting and extend flexibility on speaking arrangements to Area Committees.

Reason: To ensure a consistent approach is taken across the Area and Strategic Planning committees.

### **Planning decision different from Officer Recommendations**

12. Para 3.25 – consider adding additional paragraphs to provide a procedure for when the Committee is minded to not follow the recommendation of officers including discretion for the Chairman to adjourn to either later the same day or to a different day

Reason: The proposed change is to add greater clarity on the procedure to be followed in circumstances where the committee reach a different conclusion to the recommendation of officers.

### **Planning Call In**

13. Para 3.31 (a) Consider allowing notification of wish to call in by Councillors after 28 days provided material considerations and reasons for the delayed request to call-in are included and the application has not already been decided.

Currently states *“Within 28 days of being notified of a Planning Application, members must use Public Access to notify the planning officer that they may wish to call-in the Planning Application to the relevant Planning Committee”*.

The 28 day period is essential in order that the Council is able to determine applications within statutory timescales. It is however recognised that we need to take into account the evolution of a planning application. It is therefore proposed to provide some flexibility to accommodate such circumstances and to allow the Service Director Planning and Environment in consultation with the Chairman to consider issues raised by members after the 28 days that may merit further scrutiny at committee.

It is suggested that a new paragraph 3.32 is inserted as follows:

*“If after the 28 days of being notified of a Planning Application as a direct result of substantial changes to the Planning Application, or change of circumstances or another reason for the delay in notification members notify the planning officer, using Public Access, that they wish to call in the Planning Application to the relevant Planning Committee citing material planning reasons then, provided the application has not yet been decided, the Service Director Planning and Environment in consultation with the Chairman (or, in his absence, the Vice-Chairman) of the relevant Planning Committee will consider the request and determine whether or not the matters raised would benefit from scrutiny at Planning Committee, or whether the exercise of delegated powers is appropriate”*

Reason: to take into account the evolution of Planning Applications, which may result in change of a Members position, past the 28 day call in period. This would need to be treated separately to the process outlined in 3.31 (a-e) to ensure the Council could meet statutory timescales in determining applications.

14. Include requirement for officers to inform councillors where a call in request is not agreed and a requirement that where a call in has been made by all members of a particular ward the matter will be automatically referred to committee.

Reason: Whilst the number of call-in requests that have not been agreed are very much in a minority of cases, there have been instances where local members have not been informed of the decision and have only found out once an application has been determined. This change would make it clear that the service will inform local members if a call-in decision has not been agreed.

Where all members of a particular ward agree that an application should be considered by planning committee indicates there is greater public interest in having a referral. Providing this as an automatic referral provides greater certainty.

15. Para 3.31 – Consider amending the whole of Para 3.31 and extending the opportunity to request a call-in to planning committee to Town and Parish Councils with material reasons and an undertaking to attend the meeting if referred to committee.

This would mean Town and Parish Councils would have 28 days to request a call-in via the Public Access system. Once received, the request to call-in would be considered by the Service Director for Planning and Environment and the relevant Chairman.

Reason: Having considered feedback from Town and Parish Councils, the majority are comfortable with the current arrangement of call-ins being directed through their unitary councillor. It was however agreed that this part of the constitution would be reviewed following concerns expressed by Town and Parish Councils, particularly in the north of the county, who previously had the right to call in planning applications to committee. The change recommended here does not give an absolute right for call-in but it does offer the opportunity for Town and Parish Councils to request a call-in (the same opportunity afforded to unitary councillors). However, it would remain the responsibility of the senior officer, in consultation with the Chairman to decide whether or not applications should be considered by committee or if they should be

delegated. This change is considered to strike an appropriate balance between the needs of the service and applicants and those of Town and Parish Councils. A separate call-in process would need to be developed for Town and Parish Councils.

### **Strategic Sites Committee**

16. consider changing Para 1.2 of the terms of reference for referral of matters to the Strategic Sites Committee as tracked below:

*“Responsibility for:*

- a. wider strategic development;*
- b. sites which have a significant impact beyond the specific local area; ~~and~~ or*
- c. sites fundamental to the implementation of an adopted or emerging Local Plan.*

*By way of example, ~~∓~~this will include **but is not limited to:***

*i Major infrastructure;*

~~*ii Minerals and Waste;*~~

~~*iii Secondary Schools;*~~

~~*iiii Large Scale Major Development comprising:*~~

- Housing (approx. 400 dwellings or more)*
- Employment (approx. 10,000 sq m or 2 hectares or more)*
- Retail (approx. 10,000 sq m or 2 hectares or more)*

Reason: The criteria contained in the Constitution are indicative only and it is a matter of interpretation of the relevant Service Director which applications are reported to Strategic Sites Committee. This proposed change therefore emphasises this point and makes it clear that the Service Director retains a discretion to determine the appropriate route for planning applications. It is strongly advised that the Council seeks to avoid becoming very prescriptive about which applications are reported to which committee as this could impact on the efficient operation of the service. (Please also see comments in paragraph 17 below).

- 16a. A requirement for notification to members of referral of matters to the Strategic Sites Committee is included in either the Constitution or the Planning Protocol and more clarity is included to make it clear that the Service Director is responsible for deciding whether an application is within the remit of the Strategic Sites Committee or not.

Reasons: Whilst there is a notification process in relation to Area Planning Committees this does not extend to the Strategic Sites Committee. It is understood that this may be a practical matter but members have found this is causing issues within their Wards.

### **Area Planning Committees**

17. Recommended the terms of reference for the Area Planning Committee are simplified to highlight that some matters may come within the remit of both an Area Planning Committee and the Strategic Sites Committee in which case responsibility will be determined by the referral made (para 1.1) and remove the current text of paragraph 1.2 and replace it with:

*“To determine those planning applications and other matters referred to and brought before the Committee for consideration and determination which are not referred to the Strategic Sites Committee or otherwise come within the remit of Strategic Sites Committee.”*

Reason: To reflect the purpose and responsibility of the Area Planning Committee in a more easily understood way utilising plain English as appropriate. This may also require similar amendments for consistency in the Strategic Sites Committee terms of reference.

### **Planning Appeals and Non-Determination**

18. Include discretion for Service Director in consultation with the chairman to determine whether a ‘minded to decision’ relating to an appeal on non-determination can be delegated to officers or referred to the relevant planning committee

Reason: although this is within the general delegations, is not currently specifically set out in the Constitution therefore, suggest include for clarity and transparency. A ‘minded to decision’ sets out the position the Council will take at an appeal on non-determination. The appeal will be determined by the Planning Inspectorate.

### **Licensing**

19. Amend terms of reference so that as required in the Budget and Policy Framework only those policies which come within the Statement of Licensing Policy are required to be adopted by Full Council. Other licensing policies outside of the Statement of Licensing Policy to be dealt with by the Licensing Committee unless they decide to refer to Full Council.

Reasons: current terms of reference require the development and review of policies relating to the functions of the Licensing Committee to be submitted to Full Council for adoption. Some of these are not within the Statement of Licensing Policy and can be dealt with by the Committee. They can still be referred to Full Council for example where the matters of policy affecting the public are significant or a wide departure from the existing position.

20. Include formal speaking arrangements and associated procedures for speaking at Regulatory Committees within Constitution

Reasons: although the speaking arrangements are set out in regulations this is recommended to provide clarity and to ensure references and procedures within the Constitution are complete.

### **Senior Appointments and Pay Committee**

21. Amend terms of reference to include power to suspend the Chief Executive, Monitoring Officer or Section 151 Officer pending investigations and to carry out, where appropriate, equivalent procedures under the Senior Managers Policy in relation to the statutory officers.

Reasons: it is considered prudent to include this to ensure there are no gaps in the employment procedures as regards statutory officers or where it may be difficult or inappropriate for other offices to deal with such employment issues. This is intended to support and supplement the Senior Managers Policy.

### **Contract Procedure Rules**

22. Technical amendments required to procedures relating to opening tenders, clarification of threshold levels, extend sealing to contracts above £1,000,000 except in an emergency and with approval of S151 Officer, up to date terminology and to reflect current changes in legislation as a result of Brexit.

Reasons: to clarify and bring up to date with legislation and current practice. In relation to sealing, it is currently *possible* that a contract above £1,000,000 might not require sealing. Suggest that except in limited circumstances which would be approved by the S151 Officer all contracts over this amount should be sealed.

### **Waivers**

23. Amend 6.22(c) to remove the requirement for a financial assessment for waivers below £50,000.

Reasons: as this relates to lower value procurements it is not considered that such an assessment will be necessary in the majority of cases. The sign off procedure for waivers allows challenge and regular reports are provided to the Audit and Governance Committee on waivers.

24. Remove Monitoring Officer from approval process for waivers but include a proviso that a minimum of 3 separate approvals must be obtained for each waiver.

Reasons: there are currently 4 approvers required for a waiver: S151 Officer (or delegated officer); Monitoring Officer, Corporate Director and Cabinet/Portfolio Holder or Chief Executive. As detailed above, regular reports are provided to Audit and Governance Committee regarding the waivers granted (and refused) to provide oversight by members and support good governance in this area. Whilst there are some delegations in place (from the S151 Officer and Monitoring Officer) this remains cumbersome and can still create extra burdens. Given the governance and oversight already built into the system, it is considered that this is not necessary.

### **Delegations**

25. Except where delegated authority already exists, change the delegations in an emergency from:

*In a major emergency listed below, the Leader or Deputy Leader or in their absence the relevant Cabinet Member or, if appropriate, the Chief Executive or a Corporate Director may take any immediate urgent decision required without consultation.*

to:



*In a major emergency listed below, the Leader may take any immediate urgent decision required without consultation. In the event that the Leader cannot be contacted or is unavailable either of the Deputy Leaders may take any immediate urgent decision required without consultation. In the event that the Leader and neither of the Deputy Leaders can be contacted or are unavailable for any reason the Chief Executive may take any immediate urgent decision required without consultation.*

Reasons: to retain decision making with members.

26. Extend power to take decisions in the absence of directors to Deputy Chief Executive as well as the Chief Executive

Reasons: ensure back up for Chief Executive and spread of workload.

27. Consider whether to prohibit delegations from two different senior officers to the same officer.

Reasons: there is no prohibition on this and if done would effectively reduce the number of decision makers, oversight and governance and potentially increase the possibility of fraudulent decision making.

28. Review and amend as appropriate powers to take legal action as per the Legal Exceptions Chart (also see 29. Below).

Reasons: as legal action is reserved to the Service Director Legal and Democratic Services and to the Corporate Directors greater clarity is needed over the split of responsibilities, ie instructions and decisions, advice and the proceedings themselves. This will complement service reviews and is not meant to change the current position.

29. Amend the clarifications on delegations to the Corporate Director or Directors with responsibility for planning to include defending planning appeals (also see 28. Above)

Reasons: although the general delegations would include this, listing it would clarify the position. Further details of legal input and advice are however still required, (eg to ensure no overlap with 18 above).

30. Clarify that the definition of "Planning Officers" in respect of referral of private planning applications to Committee in the Legal Exceptions Chart includes all officers working in the Planning and Environment Service.

Reasons: although Planning Support or Administrative Officers take no part in decision making, for transparency it is considered that all planning applications made by any officer working within the Planning and Environment Service should go to Committee. This was meant to be the case but due to the technical definition included in the Constitution for other purposes this is not necessarily clear and should be clarified.

31. Update Legal Exceptions Chart to clarify that a Planning Application is as detailed in the Glossary to the Constitution.

Reasons: only outline, full or reserved matter applications are able to be called into committee. However the use of lower case “planning applications” could lead members of the public and local members to believe that any application made to the Planning Department may be called in to committee such as applications to discharge conditions, Certificates of lawfulness, advertising consents, etc. By referring back to the Glossary definition this would be clarified.

32. Change Select Committee membership requirements and restrictions to preclude Select Committee members from being members of executive working groups.

Reasons: where a policy or proposal considered by an executive working group is called in or otherwise considered by a Select Committee, this ensures that no member will be reviewing or scrutinising a decision in which they took part. This supports the scrutiny function of the Select Committees.

33. Replace the Code of Conduct in Part H Section 2 with the Code of Conduct in Appendix B

Reasons: as detailed in the covering report and reports to Standards and General Purposes Committee

### **Planning Protocol (Not part of Constitution)**

Whilst not part of the Constitution, the Planning Protocol is attached as an appendix to the constitution. Following a year of operation, there are some areas of the protocol that need to be updated. These changes are agreed with the Cabinet Member and will be introduced when a new constitution is published.