

	<b>Full Council</b> 22 January 2018
	<b>Report from the Director of Legal and HR Services</b>
<b>Amendments to the Constitution</b>	

<b>Wards Affected:</b>	N/A
<b>Key or Non-Key Decision:</b>	N/A
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
<b>No. of Appendices:</b>	Four
<b>Background Papers:</b>	None
<b>Contact Officer(s):</b> (Name, Title, Contact Details)	Debra Norman, Director of Legal and HR Services, 02089371578

## 1.0 Purpose of the Report

- 1.1 This report proposes a number of changes to the council's Constitution. These principally affect the financial limits on officers' delegated powers in respect of procurement decisions and the terms of reference of the Planning Committee (and related standing orders) and the Planning Code of Practice. In addition some other minor changes are proposed as set out in the report and/or the Appendices.

## 2.0 Recommendations

- 2.1 To approve the changes to the Constitution proposed in this report and/or contained in the Appendices.
- 2.2 To authorise the Director of Legal and HR Services to amend the Constitution accordingly, including making any necessary incidental or consequential changes.

## 3.0 Detail

- 3.1 During 2017 a number of changes to the Constitution were agreed by the Council, in particular these have involved refreshing the scrutiny call-in procedures, establishing the Audit Advisory Committee, bringing the Policy Framework section up to date and carrying out a restructure of the Constitution to make it shorter and easier to navigate.

- 3.2 This report proposes further changes to increase the financial limits on officers' delegated powers in respect of procurement decisions (which are currently the same or lower than when the Constitution was first adopted in 2002) and to amend constitutional arrangements in respect of planning matters following a recent review.

### **Changing financial limits on officer procurement decisions**

- 3.3 Financial limits on officers' delegated powers in relation to procurement are quite low compared with many other similar authorities. This slows the pace at which the organisation can work and creates unnecessary bureaucracy for routine procurement. Increasing the scope of officer delegation would reduce the number of procurement related reports on the Cabinet agenda and speed up routine procurement.
- 3.4 The Council adopted the Constitution for the first time under the legislation establishing executive arrangements in 2002. The threshold at which decisions to go out to tender and to award contracts had to be referred to the Executive (now Cabinet) was the same then as it is currently in respect of services or supplies contracts (£500k) but £1million (i.e. twice the current threshold) in respect of works contracts.
- 3.5 It is proposed that the thresholds be increased to £2m in respect of supplies and services contract and £5m in respect of works contracts. It is estimated that this will reduce the number of supplies and services contracts in the procurement pipeline which require a member level decision to be reduced by half. Should the relevant Cabinet Member wish any particular contract under the new threshold to be referred to Cabinet for decision, they will be able to require that to happen. For existing tender processes below the new thresholds, an award report will only come to Cabinet if specifically requested by the relevant cabinet member.
- 3.6 The proposed changes are set out in **Appendix 1**. This includes changes to thresholds relating to variations and to provision of services by the council to be more in line with the proposed new procurement decision thresholds.

### **Changes to Planning Matters**

#### ***1. Terms of reference of the Planning Committee***

- 3.7 The terms of reference of the Planning Committee have been reviewed and re-stated as set out in **Appendix 2** to achieve greater clarity and a better focus on strategic, timely and cost effective decision making. The following key changes are proposed:
- (i) With the exception of councillor call-ins, officer referrals and specific Planning Committee requests, only applications recommended for *approval* will be considered by the Committee;

- (ii) Raising the floorspace threshold for a non residential building to be considered at Planning Committee from 500sq. metres to 1,000sq metres;
- (iii) To include within the terms of reference of the Planning Committee clear and comprehensive criteria for valid written objections and councillor referrals/call-in requests (the latter is currently set out in the Planning Code of Practice).
- (iv) Raising the threshold for the number of individual objections triggering Planning Committee consideration from 3 to 8, and from 5 signatures to 10 in respect of petitions;
- (v) Removing the policy consultation function of the Planning Committee as the Local Plan Member Working Group now exists for this purpose;
- (vi) Removing specific references to applications and enforcement action giving rise to the payment of compensation, s106 agreements and highways agreements, tree preservation orders and hazardous substances; and
- (vii) Excluding (but not in all circumstances) section 73 applications, which are minor material amendments to application.

## ***2. Standing orders relating to planning matters***

- 3.8 Proposals to amend standing orders relating to public speaking rights; voting; petitions and Members' right to speak at Planning Committee meetings are all explained and the changes tracked at **Appendix 3**.

## ***3. Planning Code of Practice***

- 3.9 For many years the Council's Members' Code of Conduct has been supplemented by a Planning Code of Practice (the planning code). The planning code provides additional guidance to all members, but members of the Planning Committee in particular, both in respect of how the requirements of the Members' Code of Conduct apply in a planning context and also on the standards of conduct and practices which are specific to planning decision making.
- 3.10 The Council's current planning code was most recently reviewed and subsequently approved in 2014. As part of a wider review of the terms of reference of the Planning Committee and Standing Orders relating to planning procedures, the planning code has been reviewed by the Council's Constitutional Working Group (CWG) with the aim of updating it and improving it in response to local experience and in line with good practice. The opportunity has also been taken to codify advice and guidance issued to Members by the Monitoring Officer from time to time.
- 3.11 More recently, the draft changes have been extended to cover pre-application discussions and discussions about undecided applications between Members

and developers. Further, the draft changes were also reported to the Audit Advisory Committee on 10 January 2018 for discussion.

3.12 The revised planning code is attached at **Appendix 4** and the proposed changes have been tracked. This is a summary of the key changes:

- (i) Additional guidance explaining the difference between predisposition (which is lawful) and predetermination (which is unlawful).
- (ii) The rules on when Councillors can request that a planning application is considered by the Planning Committee (i.e. councillor call-in powers) have been incorporated into the proposed changes to the terms of reference of the Planning Committee and removed from the planning code.
- (iii) Removal of the requirement for planning applications submitted by Planning Committee Members to be decided by the Planning Committee in all cases. Instead normal rules, i.e. the updated and improved terms of reference of the Planning Committee (as proposed) which set out when applications have to or can be considered by the Committee, will apply. The relevant criteria, including the general discretion officers have to refer applications to the Planning Committee, provide proportionate safeguards. However, applications considered under officer delegated powers will be approved by the Head of Planning or the Strategic Director Regeneration and Environment.
- (iv) Additional guidance on lobbying.
- (v) There is a new section on 'Discussions between members and meetings with developers or their representatives'. This in part incorporates into the code ad hoc advice issued by the Monitoring Officer to Members in the recent past and in part strengthens the Council's commitment to being seen to be promoting good practice. The requirements aim to strike a proper balance between promoting public confidence in the integrity of the planning process and the legitimate reality of local government life. Of particular note is the requirement that pre-application discussions or discussions about undecided applications between Members and developers (or their representatives), are arranged, attended and documented by an officer.
- (vi) The section on Planning Committee site visits has been amended: site visits will be agreed by the Chair of the Planning Committee and the Head of Planning and the purpose of site visits has been clarified.
- (vii) The requirement to defer an application if the Planning Committee is minded to grant planning permission contrary to the recommendation of officers has been removed. The inflexibility is no longer considered to be necessary or even appropriate. Instead, there is additional guidance on when Members should consider deferring decisions and the following proportionate safeguards will be written into Standing Orders. The requirement for Members to (1) give relevant and sufficient planning reasons, (2) give officers an opportunity to explain the implications of the

contrary decision, (3) consider deferring the application and (4) to vote not to defer whenever Members are minded to grant or refuse planning permission contrary to the recommendation of officers.

- (viii) The requirement for the planning code to be reviewed every three years has been extended to 4 years.

- 3.13 The planning code is also being independently reviewed by a planning expert. As previously mentioned, the internal review of the planning code is part of a wider review of planning changes to the Constitution which will be reported to Full Council as a complete package of reforms at its next meeting which there is no need to delay. If any recommendations for further improvements are made, the planning code will be the subject of further consideration any additional changes will be reported to Full Council for approval.

### **Other Minor changes**

- 3.14 Three other minor changes are proposed. It is proposed that in order to enhance the council's engagement with young people, 20 minutes be set aside at alternate council meetings as part of question time for questions to be asked by the Youth Parliament. In addition, a clarification is proposed in respect of the restriction on officer decisions where services are restricted. It is proposed that the Information Governance Manager be designated as the council's Data Protection Officer required under the General Data Protection Regulation from 25 May 2018. These changes are set out in **Appendix 1**.

## **4.0 Financial Implications**

- 4.1 None directly arising from this report.

## **5.0 Legal Implications**

- 5.1 These are contained in the body of the report.

## **6.0 Equality Implications**

- 6.1 None.

## **7.0 Consultation with Ward Members and Stakeholders**

- 7.1 The proposals in this report have been considered by the council's Constitutional Working Group.

## **8.0 Human Resources/Property Implications (if appropriate)**

- 8.1 None.

### **Report sign off:**

**Debra Norman**  
**Director of Legal and HR**  
**Resources**

