

Subject:	Review of the Constitution		
Date of Meeting:	5th December 2019		
Report of:	Executive Lead Officer for Strategy, Governance & Law (Monitoring Officer)		
Contact Officer:	Name:	Abraham Ghebre-Ghiorghis	Tel: 01273 291500
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Ward(s) affected:	(All Wards);		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report proposes changes to the Council's Constitution for approval by Policy & Resources Committee and (where relevant) Council. The proposals set out in the report have been considered by the cross-party Constitutional Working Group (CWG).

2. RECOMMENDATIONS:

Policy and Resources Committee:

- 2.1 That the proposal to make changes to the Scheme of Delegations to Officers in Part 6 of the Council's Constitution relating to the Council's planning functions as indicated in Paragraphs 4.1-4.3 and Appendix 1 be agreed.
- 2.2 That the proposal to change Part 6 of the Council's Constitution to increase the financial threshold in relation to officer delegations governing the acquisition of residential property in para 4.5 be agreed.
- 2.3 That the proposal in para 4.9 to invite a BAME individual to attend Policy & Resources Committee early in 2020 be approved as a first step to increase participation and input by protected characteristic groups.
- 2.4 That the proposal in paragraphs 4.11 which relates to the arrangements for the council's Member Working Groups be agreed.
- 2.5 That the draft protocol regarding the use of urgency powers attached at Appendix 6 and referred to at paragraphs 4.13-4.14 be agreed.
- 2.6 That Full Council be recommended to approve the changes recommended to it in paras 2.7 to 2.9 below.

Full Council:

- 2.7 That the proposed changes to delegations in respect of Planning Committee and to relevant Protocols be agreed as indicated in paras 4.1 to 4.3 and Appendices 2-4.
- 2.8 That the proposal at para 4.12 to amend the Council Procedure Rules in respect of the arrangements of the council's Urgency Sub Committees be agreed.
- 2.9 That the proposal at para 4.15 for a gender-neutral Constitution and the proposal for a BME invitee to attend Policy & Resources Committee meetings as referred to in paragraph 4.9 be agreed.

Policy & Resources Committee and Full Council:

- 2.10 That the Chief Executive and Monitoring Officer be authorised to take all steps necessary or incidental to the implementation of the changes agreed by the Policy & Resources Committee and by Full Council, and that the Monitoring Officer be authorised to amend and re-publish the Council's constitutional documents to incorporate the changes.
- 2.11 That the proposed changes come into force immediately following their approval by Policy & Resources Committee or adoption by Full Council, as appropriate.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Council is required to keep its Constitution under review with a view to achieving efficiency, economy and effectiveness. The cross-party Constitutional Working Group (CWG) was set up to assist with this by considering proposals and advising the Council on proposed changes to the constitution. The current members of the CWG are Councillors Moonan (Chair), Littman and Wares . The proposals set out in the report were discussed and agreed by the CWG on 12th September 2019 and on 4th November 2019.

4. PROPOSALS

Planning delegations

- 4.1 This proposal seeks to make provision for a process whereby Permission in Principle and Technical Details Consent may be decided by Planning Committee or by Officers. This is required in order to bring the Constitution into line with current legislation.
- 4.2 The Town and Country Planning (Permission in Principle) Order 2017 (as amended) introduced the ability to apply for Permission in Principle for residential development and for the subsequent Technical Details Consent. Permission in Principle can be granted in relation to location, land use and amount of development. The following development proposals are excluded from the ability to apply for Permission in Principle: major development; EIA development;

householder development and development likely to have a significant effect on sites within the Habitats Regulations.

- 4.3 The changes to the Constitution which are proposed are attached as Appendices 1 to 4 inclusive. The proposals have been approved in principle by Planning Working Group members in addition to the Constitution Review Group. The proposals allow officers to determine applications for Permission in Principle unless the existing call-in triggers apply, in which case the application would be determined by Planning Committee.

Proposal to change officer delegations in relation to the acquisition of residential property

- 4.4 On 18/9/2019 the Housing and New Homes Committee received a report with a recommendation that the financial limits applied to the officer delegations in relation to land acquisition be reviewed. That Report is attached as Appendix 5.
- 4.5 The current officer delegations enable the acquisition of land, after consultation with the Chair of P&R, up to a value of £250,000. As indicated in the report to Housing and New Homes Committee, it was proposed that the officer delegation limit be increased to £500k for the purpose of the acquisition of residential land only. This increase was suggested as a means of assisting the Council in meeting its priorities for homes and emergency accommodation. The increases in delegation will enabling the Council to act quickly to secure successful purchases. It is proposed to do an annual report to Policy & Resources Committee on acquisitions so that Members have the opportunity to consider how the arrangements work in practice and review them if necessary.
- 4.6 In addition to the Housing and New Homes Committee, the proposal has been reviewed by the Constitution Review Group, which approved the principle of increasing the threshold.

Proposals to encourage and develop Black, Asian and Minority Ethnic ('BAME') engagement and participation in Council decision-making

- 4.7 The Constitution Review Working Group considered the findings of the Operation Black Vote Audit which was published earlier this year. That audit placed this Council at the very bottom of a league table nationally insofar as BAME representation in the Council's elected members was concerned. While that audit was carried out prior to the May 2019 local elections, the Constitution Review Group also noted the findings of the Global HPO report which was brought to the Policy and Resources Committee in October 2019 and which considered race equality within the council's workforce.
- 4.8 The CWG considered the actions that might lawfully be taken as a proportionate means of tackling the issues which had been identified. CWG also noted the work done by other councils to develop civic leadership programmes with under-represented groups with the aim of encouraging the engagement of persons with one or more protected characteristics.
- 4.9 The Working Group seeks this Committee's approval to agree to the attendance of a BAME individual to provide a 'lived experience' perspective at a meeting of

Policy & Resources Committee in early 2020 as a first step. It is proposed that the choice of nominees be led by relevant community groups and that the nominee be invited to attend this Committee rather than being co-opted onto it due to the legal prohibition which prevents co-optees to committees which regulate or control the council's finances (S102 Local Government Act 1972).

- 4.10 It is further proposed to explore options for a broader programme to offer civic engagement opportunities, including to other protected characteristic groups. This will be the subject of a further report to this Committee in due course.

Arrangements for proceedings of the Council's Member Working Groups

- 4.11 In July 2019 this Committee approved terms of reference which had been prepared for each of the Council's existing permanent member working groups ('MWGs'). In order to ensure that those groups function in a way which is consistent, it is proposed that the following general expectations be embedded in Part 4 of the Constitution:-

- That the Chair of each MWG shall normally be appointed from the council's largest political group unless Policy & Resources Committee has made other express provision;
- That while MWGs will be expected to achieve consensus where possible, the Chair shall have the right to exercise a casting vote;
- That the political groups may change any of its nominees or provide substitutes for any of its nominees to any MWGs.

Arrangements for proceedings of Urgency Sub Committees

- 4.12 There is currently an express requirement that an Urgency Sub Committee '*shall consist of the Chair of the Committee and two other Members nominated by the Group Leader or Leaders as appropriate to meet the requirements for the allocation of seats between political groups*'. It is proposed to amend Council Procedure Rule 22.1 to allow for flexibility for the political group from which the Chair comes to choose their nominee rather than require the Chair to be a member of the Urgency Sub Committee. The amendment will state that the Chair of the Committee should '*normally*' be the Chair of the parent Committee. This is considered to create an expectation without imposing an express requirement.

Arrangements for use of urgency powers

- 4.13 The CWG considered a draft protocol on the use of urgency powers which is intended to clarify the arrangements for the use of Special Committee meetings, urgency Sub-Committees and Officer urgency powers. The draft protocol is attached at Appendix 6. The protocol includes two flow charts illustrating:-

(1) the hierarchy of decision making, meaning that officer urgency powers are only used when it is not reasonably practicable to convene a member decision making body; and

(2) the specific steps that need to be taken when officer urgency powers are used.

- 4.14 The protocol requires an annual report on the use of officer urgency powers to be reported in May to P&R. Further it requires each exercise of officer urgency powers to be recorded on an Officer Decision Record which will include the details of the consultation undertaken with the Chair/Deputy Chair of the relevant Committee before taking a decision.

Incorporating gender-neutral language in the Council's Constitution

- 4.15 The Council's Constitution is a living document which evolves over time to reflect the Council's arrangements for exercising the powers vested in it. It has been noted that the Constitution does not currently use gender neutral language, but instead deploys gendered pronouns which rely on binary oppositions ('he' and 'she').
- 4.16 It is proposed that the Constitution be amended throughout so as to consistently incorporate language which is fully gender-neutral. Making these changes to this key council text would reinforce the Council's commitment to describing and categorising people in ways that are inclusive and supportive. The proposal would be achieved by using 'they' to replace 'he' or 'she' as a singular pronoun in appropriate situations, while making any small adaptations considered necessary in order to ensure that there is no detrimental impact on clarity of meaning.
- 4.17 This Committee is asked to recommend that full Council formally approve the above proposal.

5. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 5.1 The Committee or Council could decide not to implement the changes set out in the report.

6. COMMUNITY ENGAGEMENT & CONSULTATION

- 6.1 The cross-party Constitutional Working Group has considered the proposals and has made the recommendations in this report.

7. CONCLUSION

- 7.1 The proposals reflect the Council's ongoing efforts to review its Constitution to ensure that it is reflective of current practice and priorities and to achieve clarity and increased efficiency. It is therefore recommended that they are pursued.

8. FINANCIAL & OTHER IMPLICATIONS:

8.1 Financial Implications:

There are not expected to be any significant financial implications arising from this report

Finance Officer Consulted: James Hengeveld

Date: 7.11.19

8.2 Legal Implications:

8.3 Policy and Resources Committee and, where specified in this report, full Council have the authority to make the changes to the Council's Constitution which are set out in the report. The intention is for the proposals to be implemented with immediate effect.

Lawyer Consulted: Victoria Simpson Date: 5.11.19

8.4 Equalities Implications:

The proposals in this report have been reviewed for adverse equalities implications. As indicated in the body of this report, the proposals at paras 4.7 and 4.15 are made with the aim of discharging the council's equalities duties. Both of these separate initiatives take as their primary focus the imperative of ensuring greater inclusivity in terms of the council's approach, and the need to ensure that the council takes a proportionate approach to seeking actively to ensure participation and engagement insofar as it is able to do so.

Sustainability Implications:

None

Any Other Significant Implications:

None identified

SUPPORTING DOCUMENTATION

Appendices:

1. Part 4 - the Scheme of Delegations to Committees - (tracked changes) (extracts)
2. Part 6 - the Scheme of Delegations to Officers (tracked changes) (extracts)
3. Part 8.5 – the Protocol for Members regarding Planning Applications (tracked changes) (extracts)
4. Part 8.6 – the Protocol for Representations at Planning Committee (tracked changes) (extracts)
5. Report to Housing and New Homes Committee of 18th September 2019
6. Draft Protocol on the use of Urgency Powers.